

Rulings on Deposition Designations – Don Bell Vol. I

Testimony	Objection	Ruling
42:2-17	701(a) & (c) (Improper lay opinion) starting at 42:16	
42:19-43:2	701(a) & (c) (Improper lay opinion)	
45:21-46:17	701(a) & (c) (Improper lay opinion) and 602 (foundation/speculation) starting at 46:10	
46:21-47:1	701(a) & (c) (Improper lay opinion); 602 (foundation)	
47:4-10	701(a) & (c) (Improper lay opinion); 602 (foundation)	
47:12-23	701(a) & (c) (Improper lay opinion); 602 (foundation) as to 47:12-13	
48:2-6	701(a) & (c) (Improper lay opinion); 602 (foundation)	
50:24-51:8	402 (relevance); 802 (hearsay); MIL (pre-conspiracy)	
70:21-71:20	Defendants object to Plaintiffs' redactions to Bell-3 (Plf. Tr. Ex. 272) for the reasons discussed in the pending motion to limit redactions [ECF 363]	
88:12-88:20	MIL (pre-conspiracy)	
97:16-101:20	802 (<i>hearsay</i>)*; 105 (as to RAF) (99:13-100:8, 100:24-101:7)	
101:23-102:17	602 (Foundation)	

105:1-106:24	802 (<i>hearsay</i>)*; Defendants object to Plaintiffs' redactions to Bell-8 (Plf. Tr. Ex. 1) for the reasons discussed in the pending motion to limit redactions [ECF 363]	
107:1-18	802 (<i>hearsay</i>)*	
135:12-13	802 (Hearsay) (as to all parties because Mr. Bell drafted in his capacity as a U. Cal. Poultry Specialist, prior to becoming a consultant for UEP)	
135:17-136:2	802 (<i>hearsay</i>)* (as to all parties because Mr. Bell drafted in his capacity as a U. Cal. Poultry Specialist, prior to becoming a consultant for UEP)	
136:21-138:23	802 (<i>hearsay</i>)* (as to all parties because Mr. Bell drafted in his capacity as a U. Cal. Poultry Specialist, prior to becoming a consultant for UEP)	
138:25-140:2	802 (<i>hearsay</i>)* (as to all parties because Mr. Bell drafted in his capacity as a U. Cal. Poultry Specialist, prior to becoming a consultant for UEP)	
140:4-140:13	802 (<i>hearsay</i>)* (as to all parties because Mr. Bell drafted in his capacity as a U. Cal. Poultry Specialist, prior to becoming a consultant for UEP)	
141:22-142:13	802 (<i>hearsay</i>)* (as to all parties because Mr. Bell drafted in his capacity as a U. Cal. Poultry Specialist, prior to becoming a consultant for UEP)	

142:18-25	802 (<i>hearsay</i>)* (as to all parties because Mr. Bell drafted in his capacity as a U. Cal. Poultry Specialist, prior to becoming a consultant for UEP)	
144:18	802 (<i>hearsay</i>)*	
146:17-148:1	802 (<i>hearsay</i>)*	
148:18-151:16	802 (<i>hearsay</i>)*	
151:20-25	802 (<i>hearsay</i>)*	
152:2-16	802 (<i>hearsay</i>)*	

Rulings on Deposition Designations – Don Bell Vol. II

Testimony	Objection	Ruling
175:23-24	Defendants object to Plaintiffs' redactions to Bell-16 (Plf. Tr. Ex. 824) for the reasons discussed in the pending motion to limit redactions [ECF 363]	
176:4-179:1	<i>802 (hearsay)*</i>	
180:15-22	701(a)-(c) (Improper lay opinion); 611 (form)	
180:25-181:3	701(a)-(c) (Improper lay opinion); 611 (form)	
181:15-18	701(a)-(c) (Improper lay opinion); 611 (form)	
185:22-186:18	<i>802 (hearsay)*</i>	
186:21-187:17	<i>802 (hearsay)*</i>	
189:7-9	701(a)-(c) (Improper lay opinion); 802 (Hearsay)	
189:12-190:1	<i>802 (hearsay)*</i> (as to 189:12-18); 701(a)-(c) (Improper lay opinion); 802 (Hearsay)	
190:3-9	<i>802 (hearsay)*</i> ; 701(a)-(c) (Improper lay opinion); 802 (Hearsay)	
192:13-18	701(a)-(c) (Improper lay opinion); 802 (Hearsay); 611 (form)	
192:20-193:9	<i>802 (hearsay)*</i> 701(a)-(c) (Improper lay opinion); 802 (Hearsay); 611 (form)	

195:9-196:16	802 (hearsay)*	
197:4-199:23	802 (hearsay)*	
203:10-13	802 (hearsay)*	
203:17-20	802 (hearsay)*	
204:6-20	802 (hearsay)*	
205:6-25	802 (hearsay)*	
206:6-22	802 (hearsay)*	
210:1-212:12	802 (hearsay)*	
216:2-5	802 (hearsay)*	
216:8-217:10	802 (hearsay)*	
221:4-8	701(a)-(c) (Improper lay opinion); 602 (Foundation)	
224:2-225:25	802 (hearsay); 602 (foundation) as to 224:2-12; 802 (hearsay)* as to 225:22-25	
226:3-227:8	802 (hearsay)*	
228:12-19	805 (hearsay within hearsay)*	
229:17-230:10	805 (hearsay within hearsay)*	
231:3-21	805 (hearsay within hearsay)*	

231:25-232:5	805 (<i>hearsay within hearsay</i>)*	
232:7-8	805 (<i>hearsay within hearsay</i>)*	
244:18-245:15	802 (<i>hearsay</i>)* Defendants object to Plaintiffs' heavily redacted version of Bell-24 (Plf. Tr. Ex. 32). The unredacted version is attached as Exhibit A at Dkt. 374.	
245:22-246:15	802 (<i>hearsay</i>)*	
252:10-18	802 (<i>hearsay</i>)*	
252:23-254:6	802 (<i>hearsay</i>)*	
255:4-7	802 (<i>hearsay</i>)*	
255:9-256:13	802 (<i>hearsay</i>)*	
256:16-24	602 (foundation)	
318:18-320:2	602, NR, NARR	
321:2-9	802 (Hearsay)	
324:3-6	403, MIL	
336:1-5	403	

EXHIBIT A

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1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

)
IN RE: PROCESSED EGG)
PRODUCTS ANTITRUST)
LITIGATION)
_____)MDL No. 2002
)08-MD-0200

THIS DOCUMENT APPLIES TO:)
ALL ACTIONS)
_____)

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VIDEOTAPED DEPOSITION OF DONALD L. BELL
Riverside, California
Tuesday, August 20, 2013

Reported by:
DENISE BARDSLEY
CSR No. 11241

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<p style="text-align: right;">2</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA 3 _____) 4 IN RE: PROCESSED EGG) 5 PRODUCTS ANTITRUST) 6 LITIGATION))MDL No. 2002 7)08-MD-0200 8 THIS DOCUMENT APPLIES TO:) 9 ALL ACTIONS) 10 _____) 11 12 Videotaped deposition of DONALD L. BELL, 13 taken on behalf of The Direct Purchaser Plaintiffs, 14 at 3500 Market Street, Riverside, California, 15 beginning at 10:01 a.m. and ending at 1:16 p.m. 16 on Tuesday, August 20, 2013, before DENISE 17 BARDSLEY, Certified Shorthand Reporter No. 11241. 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">4</p> <p>1 APPEARANCES (continued): 2 3 For The Indirect Purchaser Plaintiffs: 4 MILBERG LLP 5 One Pennsylvania Plaza 6 New York, New York 10119 7 (646) 733-5727 8 (No appearance.) 9 10 For Indirect Action Plaintiffs: 11 LOVELL STEWART HALEBIAN & JACOBSON LLP 12 BY: MERRICK SCOTT RAYLE 13 Attorney at Law 14 61 Broadway, Suite 501 15 New York, New York 10006 16 (212) 608-1900 17 msrayle@sbcglobal.net 18 19 For Weaver Brothers: 20 DISNMORE & SHOHL LLP 21 1100 Courthouse Plaza SW 22 10 North Ludlow Street 23 Dayton, Ohio 45402 24 (937) 463-4928 25 (No appearance.)</p>
<p style="text-align: right;">3</p> <p>1 APPEARANCES: 2 3 For The Direct Purchaser Plaintiffs: 4 QUINN EMANUEL URQUHART & SULLIVAN, LLP 5 BY: STEIG D. OLSON 6 Attorney at Law 7 51 Madison Avenue, 22nd Floor 8 New York, New York 10010 9 (212) 849-7152 10 steigolson@quinnemanuel.com 11 12 For The Direct Purchaser Plaintiffs: 13 HAUSFELD, LLP 14 BY: JAMES J. PIZZIRUSSO 15 Attorney at Law 16 1604 Locust Street, 2nd Floor 17 Philadelphia, Pennsylvania 19103 18 (215) 985-3270 19 jpizzirusso@hausfeldllp.com 20 21 22 23 24 25</p>	<p style="text-align: right;">5</p> <p>1 APPEARANCES (continued): 2 3 For the Deponent: 4 UNIVERSITY OF CALIFORNIA 5 BY: MICHAEL R. GOLDSTEIN 6 Attorney at Law 7 1111 Franklin Street, 8th Floor 8 Oakland, California 94607 9 (510) 987-9895 10 michael.goldstein@ucop.edu 11 12 For Midwest Poultry Services: 13 FAEGRE BAKER DANIELS 14 BY: KATHY L. OSBORN 15 Attorney at Law 16 300 North Meridian Street, Suite 2700 17 Indianapolis, Indiana 46204-1750 18 (317) 237-1144 19 kathy.osborn@faegrebd.com 20 (Telephonic appearance.) 21 22 23 24 25</p>

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<p style="text-align: right;">6</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For RW Sauder, Inc.:</p> <p>4 DECHERT LLP</p> <p>5 2929 Arch Street</p> <p>6 Philadelphia, Pennsylvania 19104</p> <p>7 (215) 994-2421</p> <p>8 (No appearance.)</p> <p>9</p> <p>10 For United Egg Producers and the United States Egg</p> <p>11 Marketers:</p> <p>12 PEPPER HAMILTON, LLP</p> <p>13 BY: WHITNEY REDDING</p> <p>14 Attorney at Law</p> <p>15 3000 Two Logan Square</p> <p>16 Philadelphia, Pennsylvania 19103</p> <p>17 (215) 981-4714</p> <p>18 reddingw@pepperlaw.com</p> <p>19 (Telephonic appearance.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">8</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Rose Acre Farms:</p> <p>4 PORTER, WRIGHT, MORRIS & ARTHUR</p> <p>5 BY: KARRI ALLEN</p> <p>6 Attorney at Law</p> <p>7 1919 Pennsylvania Avenue NW, Suite 500</p> <p>8 Washington, D.C. 20006</p> <p>9 (202) 778-3056</p> <p>10 kallen@porterwright.com</p> <p>11 (Telephonic appearance.)</p> <p>12</p> <p>13 For Nu-Cal Foods, Inc.:</p> <p>14 KASOWITZ BENSON TORRES & FRIEDMAN, LLP</p> <p>15 BY: JASON S. TAKENOUCI</p> <p>16 Attorney at Law</p> <p>17 101 California Street</p> <p>18 San Francisco, California 94111</p> <p>19 (415) 655-4335</p> <p>20 jtakenouchi@kasowitz.com</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">7</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Giant Eagle, Inc.:</p> <p>4 MARCUS & SHAPIRA LLP</p> <p>5 One Oxford Center, 35th Floor</p> <p>6 Pittsburgh, Pennsylvania 15219</p> <p>7 (412) 338-3344</p> <p>8 (No appearance.)</p> <p>9</p> <p>10 For Cal-Maine Foods, Inc.:</p> <p>11 GIBSON, DUNN & CRUTCHER LLP</p> <p>12 2100 McKinney Avenue</p> <p>13 Dallas, Texas 75201-6912</p> <p>14 (214) 698-3279</p> <p>15 (No appearance.)</p> <p>16</p> <p>17 For Sparboe Farms, Inc.:</p> <p>18 BRIGGS AND MORGAN</p> <p>19 2200 IDS Center</p> <p>20 80 South 8th Street</p> <p>21 Minneapolis, Minnesota 55402</p> <p>22 (612) 977-8415</p> <p>23 (No appearance.)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">9</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Hillandale Farms, Inc., Hillandale Farms East,</p> <p>4 Inc., Hillandale Gettysburg LP and Hillandale Farms</p> <p>5 of Pa., Inc.:</p> <p>6 BUCHANAN, INGERSOLL & ROONEY</p> <p>7 Two Liberty Place</p> <p>8 50 South 16th Street, Suite 3200</p> <p>9 Philadelphia, Pennsylvania 19102</p> <p>10 (215) 665-3884</p> <p>11 (No appearance.)</p> <p>12</p> <p>13 For the Direct Action Plaintiffs:</p> <p>14 JENNER & BLOCK</p> <p>15 BY: STEPHEN R. BROWN</p> <p>16 BY: RICHARD CAMPBELL (Telephonic appearance)</p> <p>17 Attorneys at Law</p> <p>18 353 North Clark Street, Suite 4500</p> <p>19 Chicago, Illinois 60654-3456</p> <p>20 (312) 840-7282</p> <p>21 stephenbrown@jenner.com</p> <p>22 richardcampbell@jenner.com</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">10</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Michael Foods:</p> <p>4 LEONARD, STREET & DEINARD</p> <p>5 BY: PETER J. SCHWINGLER</p> <p>6 Attorney at Law</p> <p>7 150 South Fifth Street, Suite 2300</p> <p>8 Minneapolis, Minnesota 55402</p> <p>9 612 335-7023</p> <p>10 peterschwingler@leonard.com</p> <p>11 (Telephonic appearance.)</p> <p>12</p> <p>13 For Moark LLC and Norco Ranch, Inc.</p> <p>14 EIMER STAHL, LLP</p> <p>15 BY: TRAVIS KENNEDY</p> <p>16 Attorney at Law</p> <p>17 224 South Michigan Avenue, Suite 1300</p> <p>18 Chicago, Illinois 60604</p> <p>19 (312) 660-7604</p> <p>20 tkennedy@eimerstahl.com</p> <p>21 (Telephonic appearance.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">12</p> <p>1 INDEX</p> <p>2 WITNESS EXAMINATION</p> <p>3 DONALD L. BELL</p> <p>4</p> <p>5</p> <p>6 BY MR. OLSON 19</p> <p>7</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 EXHIBIT DESCRIPTION PAGE</p> <p>12 Exhibit 1 E-mail from Gene Gregory to 22</p> <p>13 Jeff Armstrong, et al., 4/13/09</p> <p>14 Bates No. SF003886</p> <p>15</p> <p>16 Exhibit 2 Managing the Nation's Laying 51</p> <p>17 Flock 1992 by Don Bell</p> <p>18 Bates Nos. BELL-D-00031284 to -295</p> <p>19</p> <p>20 Exhibit 3 UEP United Voices, 2/22/99 70</p> <p>21 Bates Nos. UE0064537 to -539</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">11</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Winn-Dixie, Inc., Roundy's Supermarkets, Inc.,</p> <p>4 C&S Wholesaler Grocers, Inc., and H.J. Heinz</p> <p>5 Company, L.P.:</p> <p>6 BAKER & MCKENZIE LLP</p> <p>7 300 East Randolph Street</p> <p>8 Chicago, Illinois 60601</p> <p>9 (312) 861-3735</p> <p>10 (No appearance.)</p> <p>11</p> <p>12 For Ohio Fresh Eggs:</p> <p>13 KEATING MUETHING & KLEKAMP PLL</p> <p>14 BY: JOSEPH M. CALLOW, JR.</p> <p>15 Attorney at Law</p> <p>16 One East Fourth Street, Suite 1400</p> <p>17 Cincinnati, Ohio 45202-3752</p> <p>18 (513) 579-6400</p> <p>19 jcallow@kmlaw.com</p> <p>20 (Telephonic appearance.)</p> <p>21</p> <p>22 Videographer:</p> <p>23 SCOTT SLATER, VERITEXT</p> <p>24</p> <p>25</p>	<p style="text-align: right;">13</p> <p>1 INDEX (Continued):</p> <p>2</p> <p>3 EXHIBITS</p> <p>4 EXHIBIT DESCRIPTION PAGE</p> <p>5 Exhibit 4 Cooperative Extension, University 83</p> <p>6 of California, Egg Economics</p> <p>7 Update, No. 154, 4/15/94</p> <p>8 Bates Nos. KRGE00020640 to -43</p> <p>9</p> <p>10 Exhibit 5 UEP Fax to Don Bell and Lee 85</p> <p>11 Schrader from Gene W. Gregory,</p> <p>12 7/1/99</p> <p>13 Bates Nos. BEL-D-00026787 to -788</p> <p>14</p> <p>15 Exhibit 6 Cooperative Extension, University 92</p> <p>16 of California letter to Al Pope</p> <p>17 from Donald Bell, 3/17/95</p> <p>18 Bates No. BEL-D-0032755</p> <p>19</p> <p>20 Exhibit 7 Cooperative Extension, University 93</p> <p>21 of California letter to Gene</p> <p>22 Gregory from Don Bell, 7/2/99</p> <p>23 Bates Nos. BELL007698 to -709</p> <p>24</p> <p>25</p>

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<p>1 INDEX (Continued):</p> <p>2</p> <p>3 EXHIBITS</p> <p>4 EXHIBIT DESCRIPTION PAGE</p> <p>5 Exhibit 8 UEP United Egg Voices, 8/2/99 104</p> <p>6 Bates Nos. UE0064456 to -459</p> <p>7</p> <p>8 Exhibit 9 E-mail to Animal Welfare 108</p> <p>9 Committee from Don Bell, 12/22/99</p> <p>10 Bates Nos. BELL004041 to -42</p> <p>11</p> <p>12 Exhibit 10 United States Egg Marketers, 114</p> <p>13 Inc. Letter to Don Bell from</p> <p>14 Jerry Faulkner</p> <p>15 Bates Nos. BELL004353 to -354</p> <p>16</p> <p>17 Exhibit 11 Recommendations for UEP Animal 116</p> <p>18 Welfare Guidelines Submitted by</p> <p>19 a Scientific Advisory Committee</p> <p>20 on Animal Welfare, 9/2000</p> <p>21 Bates Nos. UE0208684 to -703</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Riverside, California, Tuesday, August 20, 2013</p> <p>2 10:01 a.m.</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Good morning.</p> <p>5 We are on the record at 10:01 a.m. on</p> <p>6 August 20th, 2013. This is the video-recorded</p> <p>7 deposition of Mr. Donald Bell. My name is Scott</p> <p>8 Slater, here with our court reporter, Denise</p> <p>9 Bardsley. We are here from Veritext Legal Solutions</p> <p>10 at the request of counsel for direct purchaser</p> <p>11 plaintiffs. This deposition is being held at 3500</p> <p>12 Market Street in the city of Riverside, California</p> <p>13 92501.</p> <p>14 The caption of this case is In Re:</p> <p>15 Processed Egg Products Antitrust Litigation, Case</p> <p>16 No. 2002 08-MD-0200.</p> <p>17 Please note that audio and video recording</p> <p>18 will take place unless all parties agree to go off</p> <p>19 the record. The microphones are sensitive and may</p> <p>20 pick up whispers, private conversations or cellular</p> <p>21 interference.</p> <p>22 I am not authorized to administer an oath,</p> <p>23 I am not related to any party in this action, nor am</p> <p>24 I financially interested in the outcome in any way.</p> <p>25 May I please have an agreement from all</p>
15	17
<p>1 INDEX (Continued):</p> <p>2</p> <p>3 EXHIBITS</p> <p>4 EXHIBIT DESCRIPTION PAGE</p> <p>5 Exhibit 12 E-mail from Gene Gregory to 132</p> <p>6 Don Bell, 12/12/00</p> <p>7 Bates Nos. UE0840403 to -404</p> <p>8</p> <p>9 Exhibit 13 Economic Consultant Agreement 133</p> <p>10 with Donald Bell</p> <p>11 Bates Nos. UE0790640, UE0790641,</p> <p>12 UE0790542</p> <p>13</p> <p>14 Exhibit 14 Cooperative Extension, University 135</p> <p>15 of California, An Egg Economics</p> <p>16 Update, 12/31/00</p> <p>17 Bates Nos. BELL-D-000028020 to -031</p> <p>18</p> <p>19 Exhibit 15 Don Bell's Table Egg Layer 144</p> <p>20 Flock Projections and Economic</p> <p>21 Commentary - 2002, 4/15/02</p> <p>22 Bates Nos. BELL002774 to -777</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 parties that we may proceed.</p> <p>2 MR. OLSON: Yes.</p> <p>3 THE VIDEOGRAPHER: Agreed?</p> <p>4 MR. GOLDSTEIN: Yes.</p> <p>5 MR. TAKENOUCHI: Yes.</p> <p>6 THE VIDEOGRAPHER: Thank you.</p> <p>7 At this time will counsel and all present</p> <p>8 please identify themselves for the record.</p> <p>9 MR. OLSON: Why don't we start with the</p> <p>10 people on the phone. Can you guys identify</p> <p>11 yourselves?</p> <p>12 MR. CAMPBELL: Richard Campbell, Jenner &</p> <p>13 Block, for the Kraft plaintiffs.</p> <p>14 MS. REDDING: Whitney Redding, Pepper</p> <p>15 Hamilton, for United Egg Producers and United States</p> <p>16 Egg Marketers.</p> <p>17 MR. SCHWINGLER: Peter Schwingler,</p> <p>18 Leonard, Street & Deinard, for Michael Foods.</p> <p>19 MR. OLSON: Anyone else on the phone?</p> <p>20 MR. KENNEDY: Travis Kennedy from Eimer</p> <p>21 Stahl for Moart, LLC, and Norco Ranch, Inc.</p> <p>22 MS. ALLEN: Kari Allen from Porter, Wright,</p> <p>23 Morris & Arthur on behalf of Rose Acre Farms, Inc.</p> <p>24 MR. CALLOW: Joe Callow for Ohio Fresh</p> <p>25 Eggs.</p>

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18	20
<p>1 MR. OLSON: Anyone else?</p> <p>2 MS. OSBORN: Kathy Osborn for Midwest</p> <p>3 Poultry Services.</p> <p>4 MR. OLSON: Anyone else?</p> <p>5 All right. This is Steig Olson from Quinn</p> <p>6 Emanuel Urquhart & Sullivan for the direct purchaser</p> <p>7 plaintiffs.</p> <p>8 MR. PIZZIRUSSO: James Pizzirusso, Hausfeld</p> <p>9 LLP, for the direct purchaser plaintiffs.</p> <p>10 MR. BROWN: Stephen Brown from Jenner &</p> <p>11 Block for Direct Action Plaintiffs, Kraft, Kellogg,</p> <p>12 General Mills and Nestle.</p> <p>13 MR. RAYLE: Merrick Rayle, Lovell, Stewart,</p> <p>14 Halebian & Jacobson, for the indirect plaintiffs.</p> <p>15 MR. TAKENOUCHI: Jason Takenouchi,</p> <p>16 Kasowitz, Benson, Torres & Friedman, for Defendant</p> <p>17 Nu-Cal Foods.</p> <p>18 MR. GOLDSTEIN: Michael Goldstein from the</p> <p>19 Regents of the University of California. I'm</p> <p>20 counsel for Mr. Bell.</p> <p>21 And with us here today is Kristen Erving, a</p> <p>22 paralegal.</p> <p>23 THE WITNESS: Donald Bell.</p> <p>24 MR. OLSON: You don't need to do that yet.</p> <p>25 THE VIDEOGRAPHER: Thank you very much.</p>	<p>1 with the United States Department of Agriculture.</p> <p>2 We had one here in Riverside, I can't remember what</p> <p>3 the details of that one were, but that was a two-day</p> <p>4 hearing of some kind. Maybe less than six.</p> <p>5 Q Okay. Well, let me go over just a couple</p> <p>6 ground rules, since it's been awhile.</p> <p>7 First of all, at any time today if you need</p> <p>8 to take a break for any reason, don't hesitate to</p> <p>9 let us know. Understood?</p> <p>10 A Uh-huh.</p> <p>11 Q I'm going to do my best to ask clear</p> <p>12 questions today. If I ask a question that's unclear</p> <p>13 to you, I'd ask that you stop me and ask for a</p> <p>14 clarification.</p> <p>15 Is that fair?</p> <p>16 A Uh-huh. That's fine.</p> <p>17 MR. GODLSTEIN: Before we go on, was that</p> <p>18 uh-huh a yes or no?</p> <p>19 THE WITNESS: Yes.</p> <p>20 MR. GODLSTEIN: Thank you.</p> <p>21 BY MR. OLSON:</p> <p>22 Q If you don't ask for a clarification, I'll</p> <p>23 assume you understood the question.</p> <p>24 Is that fair?</p> <p>25 A Yes.</p>
19	21
<p>1 Will the court reporter please administer</p> <p>2 the oath.</p> <p>3</p> <p>4 DONALD L. BELL,</p> <p>5 having been administered an oath, was examined and</p> <p>6 testified as follows:</p> <p>7</p> <p>8 EXAMINATION</p> <p>9 BY MR. OLSON:</p> <p>10 Q Good morning, Mr. Bell.</p> <p>11 A Good morning.</p> <p>12 Q Could you please state your full name and</p> <p>13 current address for the record.</p> <p>14 A Donald D. Bell, B-e-l-l. 5918 Intervale,</p> <p>15 I-n-t-e-r-v-a-l-e, Drive, Riverside, California</p> <p>16 92506.</p> <p>17 Q Thank you.</p> <p>18 Have you ever been deposed before?</p> <p>19 A Yes.</p> <p>20 Q When was the last time you were deposed?</p> <p>21 A Oh, maybe 15 years ago.</p> <p>22 Q What type of case was it?</p> <p>23 A Let's see, several different types of</p> <p>24 cases. I think we've had individual lawsuits about</p> <p>25 the feeding of any flocks, about the indemnification</p>	<p>1 Q You're doing a great job of this, but just</p> <p>2 to reiterate the point, because we have a court</p> <p>3 reporter today, we have to do our best not to speak</p> <p>4 over each other. And in answering questions, please</p> <p>5 answer verbally, and yes or no as opposed to</p> <p>6 gestures.</p> <p>7 Fair enough?</p> <p>8 A Yes.</p> <p>9 Q All right. Now, how are you feeling today,</p> <p>10 sir?</p> <p>11 A I'm feeling about normal for me, a little</p> <p>12 backache, but that's okay.</p> <p>13 Q Okay. And, as I said, if you need to</p> <p>14 stretch your back or anything, let us know.</p> <p>15 Is there anything today about your health</p> <p>16 or otherwise that would stop you from being able to</p> <p>17 answer my questions truthfully to the best of your</p> <p>18 knowledge?</p> <p>19 A Not to the best of my knowledge.</p> <p>20 Q And if you ever start to tire and your mind</p> <p>21 is feeling fuzzy or anything, again, I'd ask that</p> <p>22 you stop and let us know.</p> <p>23 Will you do that?</p> <p>24 A Yes.</p> <p>25 Q Thank you.</p>

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<p style="text-align: right;">22</p> <p>1 Are you employed today?</p> <p>2 A No. I'm retired.</p> <p>3 Q How long have you been retired?</p> <p>4 A Since 2001.</p> <p>5 Q When was the last time that you received</p> <p>6 any compensation for any type of job or consulting</p> <p>7 project involving the egg industry?</p> <p>8 A There's correspondence to that effect when</p> <p>9 I gave the United Egg Producers a wish to terminate</p> <p>10 my relationship because of my age and lack of close</p> <p>11 contact with the industry. That might have been --</p> <p>12 I'd hate to give it to you, because it is in</p> <p>13 correspondence.</p> <p>14 Q Okay. And so I think I know what you're</p> <p>15 referring to, so why don't we just introduce the</p> <p>16 document that goes to that.</p> <p>17 From time to time today I'll hand you</p> <p>18 documents. Sometimes I'll -- it will be important</p> <p>19 for you to look at the whole document, other times</p> <p>20 maybe just portions. But if you ever think you need</p> <p>21 to look at the whole document, just let us know.</p> <p>22 (Deposition Exhibit 1 was marked for</p> <p>23 identification by the court reporter</p> <p>24 and is attached hereto.)</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">24</p> <p>1 A The answer is yes.</p> <p>2 Q Okay. After that date of July 1, 2009,</p> <p>3 have you done any work or consulting in the egg</p> <p>4 industry that you were paid for?</p> <p>5 A No.</p> <p>6 Q Now, you referred to retiring in 2001.</p> <p>7 What did you retire from in 2001?</p> <p>8 A Well, my position was University of</p> <p>9 California poultry specialist statewide. Now my</p> <p>10 title is emeritus in that same title.</p> <p>11 Q Okay. So after 2001 you became emeritus?</p> <p>12 A Yes.</p> <p>13 Q And what is a poultry specialist?</p> <p>14 A A poultry specialist is one of the staff of</p> <p>15 the state land grant institution in the cooperative</p> <p>16 extension, not university extension, but cooperative</p> <p>17 extension.</p> <p>18 This organization is part of the role of</p> <p>19 the university to teach, research and extend</p> <p>20 information.</p> <p>21 My role was to work with the poultry</p> <p>22 industry of California, mostly in educational,</p> <p>23 research areas.</p> <p>24 Q Did you teach courses in that position?</p> <p>25 A Just adult courses from time to time, but</p>
<p style="text-align: right;">23</p> <p>1 Q I'm handing you what's been marked Bell 1.</p> <p>2 MR. TAKENOUCHI: Steig, for housekeeping</p> <p>3 purposes, can you note the Bates number?</p> <p>4 MR. OLSON: We already talked about that.</p> <p>5 MR. TAKENOUCHI: Okay.</p> <p>6 MR. OLSON: And Bell 1 is Bates-stamped</p> <p>7 SF003886.</p> <p>8 Q And you can keep it in front of you.</p> <p>9 Can you just start by identifying this as</p> <p>10 an e-mail written by Gene Gregory on April 13, 2009</p> <p>11 and you were copied and it was sent to a number of</p> <p>12 people?</p> <p>13 A That's true, yes.</p> <p>14 Q Okay. Is this the type of correspondence</p> <p>15 that you're referring to?</p> <p>16 A Yes, this is what I was referring to.</p> <p>17 Q All right. And this indicates that you had</p> <p>18 informed UEP in early 2009 that you were going to</p> <p>19 finally retire effective July 1, 2009, correct?</p> <p>20 MR. TAKENOUCHI: Objection to form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. OLSON: What's the objection?</p> <p>23 MR. TAKENOUCHI: Leading.</p> <p>24 BY MR. OLSON:</p> <p>25 Q The answer is yes?</p>	<p style="text-align: right;">25</p> <p>1 nothing formal.</p> <p>2 Q And over what period did you hold that</p> <p>3 position?</p> <p>4 A 55 years.</p> <p>5 Q Does that go through 2001 or through to the</p> <p>6 present?</p> <p>7 A Can I correct myself?</p> <p>8 Q Yes.</p> <p>9 A I had several positions in the same general</p> <p>10 area. As I got older, I got -- I had changes in</p> <p>11 title. Okay? But it is all doing the same thing.</p> <p>12 Q Okay. And approximately when did you start</p> <p>13 in that position?</p> <p>14 A 1958.</p> <p>15 Q Now, over the course of your career in that</p> <p>16 position and afterwards, did you make any</p> <p>17 contributions to UEP and its members?</p> <p>18 MR. TAKENOUCHI: Objection.</p> <p>19 MR. OLSON: What's the objection?</p> <p>20 MR. TAKENOUCHI: Contributions, what does</p> <p>21 that mean?</p> <p>22 THE WITNESS: I don't know what that means</p> <p>23 either.</p> <p>24 BY MR. OLSON:</p> <p>25 Q Okay. Did you contribute any reports or</p>

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<p style="text-align: right;">26</p> <p>1 analyses to UEP and its members?</p> <p>2 A Yes.</p> <p>3 MR. GODLSTEIN: I'm sorry, Steve. Before</p> <p>4 you go on, I want to move his microphone up a little</p> <p>5 because he's folding his arms and he may be</p> <p>6 impairing the record.</p> <p>7 THE WITNESS: I'll keep it down.</p> <p>8 MR. GOLDSTEIN: I want you to be able to</p> <p>9 fold your arms if you want to.</p> <p>10 I'm sorry.</p> <p>11 BY MR. OLSON:</p> <p>12 Q Over approximately what -- strike that.</p> <p>13 Approximately when did you start</p> <p>14 contributing reports and analyses to UEP's members?</p> <p>15 MR. TAKENOUCHI: Object to form,</p> <p>16 contributing reports and analyses.</p> <p>17 MR. GODLSTEIN: Go ahead.</p> <p>18 THE WITNESS: I'll try to answer that</p> <p>19 question.</p> <p>20 Since the formation of UAP. I don't know</p> <p>21 what year that was, but since the beginning.</p> <p>22 BY MR. OLSON:</p> <p>23 Q And approximately when did you stop doing</p> <p>24 that?</p> <p>25 A Theoretically, I'm still doing it today.</p>	<p style="text-align: right;">28</p> <p>1 with their chairperson. And, of course, I've always</p> <p>2 had the relationship with their members on a</p> <p>3 one-on-one basis in my regular duties.</p> <p>4 BY MR. OLSON:</p> <p>5 Q But was there a period when you were</p> <p>6 retained to provide industry statistics and economic</p> <p>7 reports for UEP?</p> <p>8 A Yes.</p> <p>9 Q When did that cease?</p> <p>10 A Cease or start?</p> <p>11 Q Cease.</p> <p>12 A Cease. I assume it's the same date we just</p> <p>13 talked about, 2009 when I terminated.</p> <p>14 Q And when did that start?</p> <p>15 A I was afraid you'd ask me that.</p> <p>16 Q Approximately.</p> <p>17 A I would say it might have been a ten-year</p> <p>18 relationship.</p> <p>19 Q Now, what type of reports did you prepare</p> <p>20 for UEP and its members?</p> <p>21 A Prior to my working with UEP, in fact since</p> <p>22 the beginning of 1958, I've always written economic</p> <p>23 reports for the industry. And UEP asked that I</p> <p>24 continue this work with them and with their members.</p> <p>25 And the Iowa State Egg Center now is continuing that</p>
<p style="text-align: right;">27</p> <p>1 Q And why do you say that?</p> <p>2 A Because I'm still working 20 hours a week.</p> <p>3 Q And what do you do in those 20 hours a</p> <p>4 week?</p> <p>5 A We write, edit and publish industry-wide</p> <p>6 newsletters.</p> <p>7 Q You say "We," who is we?</p> <p>8 A The Iowa State Egg Industry Center. I'm on</p> <p>9 the board of directors.</p> <p>10 Q And are those newsletters sent to UEP?</p> <p>11 A Sent to 1,000 egg producers in the United</p> <p>12 States and their allied industries.</p> <p>13 Q How long were you affiliated with UEP,</p> <p>14 specifically?</p> <p>15 MR. TAKENOUCHI: Objection to form,</p> <p>16 "affiliated," the term is vague.</p> <p>17 MR. OLSON: I'll ask when I want a</p> <p>18 clarification; otherwise you can just object to</p> <p>19 form.</p> <p>20 MR. TAKENOUCHI: Okay. You asked me for</p> <p>21 clarification before.</p> <p>22 MR. OLSON: No -- right. I didn't ask this</p> <p>23 time or the last time.</p> <p>24 THE WITNESS: As I say, I began working in</p> <p>25 cooperation at the beginning of their organization</p>	<p style="text-align: right;">29</p> <p>1 work also.</p> <p>2 Q And so you referred to economic reports</p> <p>3 that UEP asked you to provide. How would you</p> <p>4 describe those economic reports?</p> <p>5 A Well, we had three regular newsletters on</p> <p>6 economics -- pardon me, four. And they would be on</p> <p>7 anything to do with the egg industry, primarily the</p> <p>8 table egg industry.</p> <p>9 And then when we worked out a relationship</p> <p>10 with UEP. We started what we called a memo,</p> <p>11 m-e-m-o, along the same lines, but everything was</p> <p>12 different or from a different approach.</p> <p>13 Q What do you mean from a different approach?</p> <p>14 A Just looking at it from the right side and</p> <p>15 the left side and from an economic standpoint, from</p> <p>16 a sociological standpoint, from local, regional,</p> <p>17 international views. Any one subject, you don't</p> <p>18 want to put it all on one piece of paper. So you</p> <p>19 might have a series of papers on a given part of one</p> <p>20 of the discussions.</p> <p>21 Q Now, of the reports that you prepared for</p> <p>22 UEP and its members, did you prepare reports that</p> <p>23 projected the size of the nation's table egg laying</p> <p>24 flock?</p> <p>25 A Yes, we do that. We've done that since the</p>

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<p style="text-align: right;">30</p> <p>1 beginning every month.</p> <p>2 Q Did you prepare analyses of the</p> <p>3 relationship between flock size and income in the</p> <p>4 egg industry?</p> <p>5 A Yes.</p> <p>6 MR. TAKENOUCHI: Objection to form.</p> <p>7 BY MR. OLSON:</p> <p>8 Q And what was the purpose of those types of</p> <p>9 reports and analyses?</p> <p>10 A Well, they are all aimed at maintaining a</p> <p>11 healthy industry. Healthy is usually interpreted as</p> <p>12 being economically sound. And you're working with a</p> <p>13 mass audience as opposed to individuals.</p> <p>14 Individual consulting without a fee is</p> <p>15 available at all times for any of these discussions,</p> <p>16 but as we feel -- as I feel the needs of the</p> <p>17 industry, along with any given line, I will tend to</p> <p>18 emphasize that for a time period.</p> <p>19 Q And how did analyses of the relationship --</p> <p>20 (Interruption in the proceedings.)</p> <p>21 MR. OLSON: Who joined? Who joined the</p> <p>22 deposition? Did someone join?</p> <p>23 Q All right. How did the analyses that you</p> <p>24 prepared of the relationship between flock size and</p> <p>25 income relate to maintaining a healthy industry?</p>	<p style="text-align: right;">32</p> <p>1 Q Now, would it be fair to say that one focus</p> <p>2 of your work was providing sound data that UEP could</p> <p>3 use to help persuade its members to manage egg</p> <p>4 supply?</p> <p>5 MR. TAKENOUCHI: Objection to form.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. OLSON:</p> <p>8 Q And based on your years of experience being</p> <p>9 affiliated with UEP, would it be fair to say that</p> <p>10 one of the things that UEP did was to try to</p> <p>11 persuade its members to manage egg supply?</p> <p>12 MR. TAKENOUCHI: Objection to form,</p> <p>13 "affiliated."</p> <p>14 THE WITNESS: Would you state the question</p> <p>15 again, please?</p> <p>16 BY MR. OLSON:</p> <p>17 Q Sure. Based on your years of experience</p> <p>18 being affiliated with UEP, would it be fair to say</p> <p>19 that one of the things that UEP did was to try to</p> <p>20 persuade its members to manage egg supply?</p> <p>21 A Yes.</p> <p>22 MR. TAKENOUCHI: Same objection.</p> <p>23 BY MR. OLSON:</p> <p>24 Q And did you think that was an important</p> <p>25 thing to do?</p>
<p style="text-align: right;">31</p> <p>1 A Well, first of all, we have to be concerned</p> <p>2 about costs, and then we have to be concerned about</p> <p>3 income.</p> <p>4 The greatest income is from eggs in this</p> <p>5 particular case; that's almost 100 percent of it.</p> <p>6 At times it might have been as low as 90 percent,</p> <p>7 but it is normally -- today it is about a hundred.</p> <p>8 Costs are predominantly feed. And so we</p> <p>9 place a lot of emphasis on feed costs and feed</p> <p>10 consumption, factors affecting feed consumption and</p> <p>11 so on. And then the other costs make up the balance</p> <p>12 of -- and so between the two, costs and income, we</p> <p>13 have a measure of the well-being of the industry.</p> <p>14 Q And what was the purpose of projecting the</p> <p>15 size of the nation's table egg laying flock and</p> <p>16 looking at flock size?</p> <p>17 MR. TAKENOUCHI: Objection; form.</p> <p>18 THE WITNESS: Well -- excuse me.</p> <p>19 BY MR. OLSON:</p> <p>20 Q You can answer the question.</p> <p>21 A I can answer it?</p> <p>22 There are many, many reasons why prices</p> <p>23 change. And the main one that's recognized is the</p> <p>24 size of the flock. More eggs, less price; less</p> <p>25 eggs, more price.</p>	<p style="text-align: right;">33</p> <p>1 A Yes.</p> <p>2 Q And did UEP, from time to time, ask for</p> <p>3 your assistance in doing that?</p> <p>4 MR. TAKENOUCHI: Objection to form.</p> <p>5 THE WITNESS: I'd say yes and no.</p> <p>6 BY MR. OLSON:</p> <p>7 Q Did UEP, from time to time, ask for you to</p> <p>8 prepare reports or analyses that would help it</p> <p>9 persuade its members to manage egg supply?</p> <p>10 MR. TAKENOUCHI: Objection to form.</p> <p>11 THE WITNESS: I'd have to say yes and no</p> <p>12 again.</p> <p>13 BY MR. OLSON:</p> <p>14 Q And what's the yes part?</p> <p>15 A The yes part is that everyone associated</p> <p>16 with the egg industry recognizes the relationship</p> <p>17 between volume of production, bird members and</p> <p>18 price. And it's -- the relationships are fairly</p> <p>19 well established.</p> <p>20 Anything that I would say -- that we have</p> <p>21 too many chickens, that we don't have enough</p> <p>22 chickens -- in a hundred examples, not just in so</p> <p>23 many words, but in a hundred different examples,</p> <p>24 applications, that that would be one of my roles,</p> <p>25 uh-huh.</p>

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<p style="text-align: right;">34</p> <p>1 Q And one of your roles was to provide data 2 that would help the industry balance the supply of 3 eggs with the demand for eggs, right? 4 A That's right. We provided a one-source 5 place to go for statistics. The statistics didn't 6 start with me, but they were focused by me on the 7 problem. 8 Q And were there times that UEP or its 9 leaders, like Gene Gregory, for example, would ask 10 you to develop plans for the industry at times when 11 there was an oversupply of eggs in the market? 12 MR. TAKENOUCHI: Objection to form. 13 THE WITNESS: Yes. 14 BY MR. OLSON: 15 Q And were there times when you were invited 16 to give presentations to the UEP board of directors 17 regarding ideas for how to balance supply of eggs 18 with demand? 19 A Yes. 20 Q And were there times when you were invited 21 to USEM meetings? And are you familiar with what 22 USEM is? 23 A I've never been invited to their meetings. 24 Q Are you sure? 25 A Are you talking about the egg</p>	<p style="text-align: right;">36</p> <p>1 Q Now, the first one you mentioned is cage 2 density. How can cage density be used in a flock 3 reduction program? 4 MR. TAKENOUCHI: Objection to form. We are 5 just talking about -- 6 MR. OLSON: Please no speaking objections. 7 You objected to form. Thank you. 8 MR. TAKENOUCHI: I'm trying to 9 understand -- 10 MR. OLSON: You objected to form, and 11 that's fine. 12 THE WITNESS: Cage density to most people 13 means how much space do you give your chickens, and 14 that also is related to how many birds you put in 15 the cage. It's not necessarily the number of birds 16 you have in the nation, that's not cage density. 17 That's hen population. 18 Cage density, I first started my research 19 with the extension service in about 1963 with cage 20 density experiments. At that time most cages held 21 one bird. The industry readily found that that was 22 not the way to go, it was not the economic way to go 23 and so they went to two. 24 What does that do? That increases the 25 population by a hundred percent. And then they went</p>
<p style="text-align: right;">35</p> <p>1 marketing association -- producers -- 2 Q Sorry. United States Egg Marketers. 3 A I may have been to their meeting once, 4 but -- I think I'll have to say I may have been. 5 There are so many different organizations, and -- 6 associated with the egg industry, including Urner 7 Barry and so on. 8 But I seem to recall that I might have had 9 a meeting with the marketing association, but 10 certainly nothing routinely. 11 Q But do you recall being asked to provide 12 data and analyses to help support USEM with the 13 flock reduction program? 14 A Yes and no. I guess you'll have to explain 15 what the flock reduction program is. 16 Q Well, to your knowledge, what is a flock 17 reduction program? 18 A Well, it could be cage density. That's 19 probably the most visible. It could be when we 20 worked with them for a national marketing order to 21 license production and I wrote several papers, so 22 it's a difficult one to answer with one word. 23 Q It could include a number of different 24 things, is that your point? 25 A Yes, I guess.</p>	<p style="text-align: right;">37</p> <p>1 to three, and so on, and so on. 2 So cage density is one of the easiest 3 things to correct and to demonstrate that this is 4 too much or too little. 5 BY MR. OLSON: 6 Q And how does cage density relate to flock 7 reduction, specifically? 8 A The same thing. The -- if we're interested 9 in reducing the flock size because the profitability 10 of the industry is absent, that's one of the first 11 things that anybody can do. And it's also not only 12 useful to the industry as a whole, but it is 13 extremely useful to the individual who is going 14 bankrupt. 15 There's always the individual -- 16 individual's needs as opposed to the industry's 17 needs. 18 Q Now, are these points about cage density 19 that you were just making ones that you communicated 20 to UEP and its members? 21 A All the time -- 22 MR. TAKENOUCHI: Objection to form. 23 THE WITNESS: All the time, yes. 24 BY MR. OLSON: 25 Q And it would be fair to say that -- that</p>

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<p style="text-align: right;">38</p> <p>1 you recognize, based on your work for the industry,</p> <p>2 that one way UEP members could manage egg supply was</p> <p>3 by adopting guidelines relating to cage density?</p> <p>4 MR. TAKENOUCHI: Objection to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. OLSON:</p> <p>7 Q And one way of adopting those guidelines</p> <p>8 would be to adopt welfare guidelines?</p> <p>9 MR. TAKENOUCHI: Objection to form.</p> <p>10 THE WITNESS: Welfare guidelines is a broad</p> <p>11 series of management tools that does not just</p> <p>12 include cage density, but cage density is one of the</p> <p>13 issues that can contribute to this.</p> <p>14 So -- go ahead.</p> <p>15 BY MR. OLSON:</p> <p>16 Q And one of the things that welfare</p> <p>17 guidelines could be used for is to manage supply?</p> <p>18 MR. TAKENOUCHI: Objection to form.</p> <p>19 THE WITNESS: That is an outcome of</p> <p>20 managing cage density, would be to manage the flock</p> <p>21 size, but it's also a way of managing the flock's</p> <p>22 health and welfare and other issues that are in</p> <p>23 demand by the industry, by the people associated</p> <p>24 with the industry.</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">40</p> <p>1 improve margins for the individual producers.</p> <p>2 BY MR. OLSON:</p> <p>3 Q But you recognize that molting also</p> <p>4 affected output, right?</p> <p>5 A Everything affects output.</p> <p>6 Q Molting does?</p> <p>7 A Go ahead with the rest of them, but</p> <p>8 everything affects output.</p> <p>9 Q Including molting, right?</p> <p>10 A Yes, up and down.</p> <p>11 Q But, in general, your work indicated to you</p> <p>12 that using molting affected output down?</p> <p>13 MR. TAKENOUCHI: Objection to form.</p> <p>14 BY MR. OLSON:</p> <p>15 Q Right?</p> <p>16 A One of the outcomes of the replacement</p> <p>17 program which includes molting, is average egg</p> <p>18 production will be less.</p> <p>19 Q And were there times when UEP, as part of</p> <p>20 its efforts to address supply issues, would</p> <p>21 recommend early molting programs to its members?</p> <p>22 MR. TAKENOUCHI: Objection; lacks</p> <p>23 foundation.</p> <p>24 BY MR. OLSON:</p> <p>25 Q To your knowledge?</p>
<p style="text-align: right;">39</p> <p>1 Q Now, you -- we were talking about factors</p> <p>2 that impact national egg supply and we've been</p> <p>3 talking about cage density.</p> <p>4 I take it, as a result of your work in the</p> <p>5 industry, you identified other factors that would</p> <p>6 affect national egg supply; is that right?</p> <p>7 A Yes.</p> <p>8 Q And let me identify a factor, and you let</p> <p>9 us know if it's one you identified as playing a</p> <p>10 major role --</p> <p>11 A Yes.</p> <p>12 Q -- in affecting national egg production.</p> <p>13 The degree of flock recycling, is that a</p> <p>14 factor?</p> <p>15 A Yes.</p> <p>16 Q And that refers to the molting process,</p> <p>17 correct?</p> <p>18 A Recycling means molting, yes.</p> <p>19 Q And as part of your work, you recognized</p> <p>20 that molting could be a way of impacting national</p> <p>21 egg production?</p> <p>22 MR. TAKENOUCHI: Objection to form.</p> <p>23 THE WITNESS: That would not be the goal of</p> <p>24 anything I've ever done on molting. The goal of</p> <p>25 using molting is to reduce costs and, therefore,</p>	<p style="text-align: right;">41</p> <p>1 A Yes.</p> <p>2 Q And what is the purpose of recommending an</p> <p>3 early molting program in order -- how does that</p> <p>4 relate to managing supply?</p> <p>5 MR. TAKENOUCHI: Objection; foundation.</p> <p>6 THE WITNESS: When you molt chickens, that</p> <p>7 particular flock goes to zero production. And if</p> <p>8 the country is overproducing, then a number of</p> <p>9 farmers going to zero production over given a period</p> <p>10 of time is beneficial to the industry because it</p> <p>11 reduces egg members.</p> <p>12 BY MR. OLSON:</p> <p>13 Q Is there an additional way that molting can</p> <p>14 be used to manage supply, other than that period</p> <p>15 when there is zero production?</p> <p>16 A The average rate of lay would be about 10</p> <p>17 percent less year in, year out.</p> <p>18 And if we have 10 percent too many</p> <p>19 chickens, that's one way of remedying that problem.</p> <p>20 Q So would it be fair to say that in times of</p> <p>21 low margins in the egg industry, molting can make</p> <p>22 economic sense?</p> <p>23 A Absolutely, yes, yes.</p> <p>24 Q Thank you. But in terms of high profits,</p> <p>25 high margins, molting makes less sense?</p>

11 (Pages 38 to 41)

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<p>1 A Well, the answer is yes.</p> <p>2 Q Now, as far as other factors that affect</p> <p>3 the size of national egg production, how about the</p> <p>4 age of hens?</p> <p>5 A Yes.</p> <p>6 Q How does that affect the size of national</p> <p>7 egg production?</p> <p>8 A Well, the older the chickens, the fewer the</p> <p>9 eggs.</p> <p>10 And so if you do molt, you're going to</p> <p>11 increase their average age by 30 or 40 weeks, which</p> <p>12 is considerable. Or if you let your flocks go</p> <p>13 without molting, you're going to keep them for a</p> <p>14 longer period without molting, and so the same thing</p> <p>15 is going to happen.</p> <p>16 Q And how about the use of exports, can that</p> <p>17 have a large impact on national egg production?</p> <p>18 MR. TAKENOUCHI: Objection to form.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. OLSON:</p> <p>21 Q And how does the use of exports affect the</p> <p>22 size of national egg production?</p> <p>23 A Well, the current problem in Mexico is a</p> <p>24 prime example. They are short of eggs because of a</p> <p>25 disease problem. They go to their neighbor, the</p>	<p>1 industry, you understood that the egg industry could</p> <p>2 make more money with fewer birds, right?</p> <p>3 A Yes.</p> <p>4 Q That's something you mentioned before</p> <p>5 today, right?</p> <p>6 A Yes.</p> <p>7 Q And that's a fact that you would stress to</p> <p>8 UEP and its members?</p> <p>9 A Yes.</p> <p>10 Q Now, as part of your work for the egg</p> <p>11 industry, did you also come to understand that</p> <p>12 increasing floor space allowances could be difficult</p> <p>13 for an individual producer on its own to justify?</p> <p>14 A Yes.</p> <p>15 Q Because if a producer just increases floor</p> <p>16 space allowances on its own, that might reduce its</p> <p>17 profits, right?</p> <p>18 A Reduces volume of production, yes.</p> <p>19 Q But did you also recognize that increasing</p> <p>20 floor space allowances could be justified for a</p> <p>21 producer if it knew that a significant number of</p> <p>22 other producers were also going to do it?</p> <p>23 MR. TAKENOUCHI: Objection to form,</p> <p>24 speculation.</p> <p>25 THE WITNESS: First of all, if you take the</p>
43	45
<p>1 United States, and buy eggs. And when you take eggs</p> <p>2 off the market, your market goes up.</p> <p>3 Q And, to your knowledge, did UEP, or</p> <p>4 affiliated groups with UEP, engage in exports for</p> <p>5 that reason?</p> <p>6 MR. TAKENOUCHI: Objection to form,</p> <p>7 foundation.</p> <p>8 THE WITNESS: I can't tell you the motive</p> <p>9 of UEP or their organizations to do that.</p> <p>10 Obviously, there are eggs that don't move on the</p> <p>11 local market and, therefore, new markets have to be</p> <p>12 sought.</p> <p>13 BY MR. OLSON:</p> <p>14 Q And, really, I'm just trying to ask a</p> <p>15 question about your level of knowledge. How</p> <p>16 knowledgeable were you about UEP or USEM's export</p> <p>17 practices?</p> <p>18 MR. TAKENOUCHI: Objection to form.</p> <p>19 MR. OLSON: What's the objection?</p> <p>20 MR. TAKENOUCHI: Compound.</p> <p>21 THE WITNESS: Just what I read in the trade</p> <p>22 press.</p> <p>23 BY MR. OLSON:</p> <p>24 Q Fair enough.</p> <p>25 Now, based on your work in the egg</p>	<p>1 range of modifying your density from low to high,</p> <p>2 you can go too far on either end, too few or too</p> <p>3 many.</p> <p>4 My concern in evaluating this is what does</p> <p>5 it return for dollar invested. And four birds in a</p> <p>6 three-bird cage is too many, one or two birds is too</p> <p>7 few. So the answer is yes and no.</p> <p>8 To the individual, the industry is mainly</p> <p>9 interested in modifying the total population, and</p> <p>10 they have to have individual people to cooperate and</p> <p>11 do that.</p> <p>12 BY MR. OLSON:</p> <p>13 Q But I just want to focus on this problem of</p> <p>14 increasing floor space allowances across the</p> <p>15 industry.</p> <p>16 A Sure.</p> <p>17 Q It might be good for everyone in the</p> <p>18 industry, as long as you don't go too far, right?</p> <p>19 MR. TAKENOUCHI: Objection to form.</p> <p>20 BY MR. OLSON:</p> <p>21 Q Is that the point you were making?</p> <p>22 A Each farmer has to judge for his own sake.</p> <p>23 You would only benefit three eggs per bird</p> <p>24 if you reduce your density. I might be involved in</p> <p>25 20 eggs. Your answer is different than my answer.</p>

12 (Pages 42 to 45)

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<p style="text-align: right;">46</p> <p>1 The nation has to look at the averages.</p> <p>2 And if someone is going to recommend, such as myself</p> <p>3 or UEP or anyone else that's in the advisory</p> <p>4 business, you have to be talking to the average</p> <p>5 company. And the average is not necessarily for you</p> <p>6 or for him. But, using a model, computer model,</p> <p>7 what have you, you can say that, well, on the</p> <p>8 average, it doesn't pay to put the fourth bird in</p> <p>9 the cage.</p> <p>10 Q Okay. So let's say that recommendation is</p> <p>11 made. Now, looking at the individual -- an</p> <p>12 individual producer, if they are worried that they</p> <p>13 are going to do it but they are going to be the only</p> <p>14 one to do it, that may be hard to justify because</p> <p>15 they're reducing their volume but not getting a</p> <p>16 larger benefit, fair?</p> <p>17 A Uh-huh.</p> <p>18 MR. TAKENOUCHI: Objection to form.</p> <p>19 MR. OLSON: You have to say yes.</p> <p>20 MR. GODLSTEIN: Say yes.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. OLSON:</p> <p>23 Q But that same producer might be more</p> <p>24 willing to follow that recommendation if it knew</p> <p>25 that a large percentage of the industry was also</p>	<p style="text-align: right;">48</p> <p>1 BY MR. OLSON:</p> <p>2 Q Is that fair?</p> <p>3 A It would be, quote unquote, more fair if</p> <p>4 everyone followed exactly the same rules. But it's</p> <p>5 not economically fair to impose a rule on you when</p> <p>6 you don't need that rule or to me when I do.</p> <p>7 Q Maybe my use of the word "fair" was</p> <p>8 confusing the question. I'm sorry.</p> <p>9 A Okay.</p> <p>10 Q I'm asking if I'm describing the problem</p> <p>11 fairly. And the problem facing UEP is that you want</p> <p>12 to increase floor space allowance to manage egg</p> <p>13 supply. It's not in an individual producer's</p> <p>14 self-interest to do that on its own, but it might be</p> <p>15 if producers were doing it jointly?</p> <p>16 MR. TAKENOUCHI: Objection; lacks</p> <p>17 foundation, speculation.</p> <p>18 THE WITNESS: I think you have a very</p> <p>19 difficult question there, because in all degrees of</p> <p>20 fairness or current experiences, cage density, you</p> <p>21 only get three eggs, I get 20, that's why we analyze</p> <p>22 each company by itself.</p> <p>23 And then once you have all that knowledge</p> <p>24 of all these companies, you never have a hundred</p> <p>25 percent, of course, as you know, but you say, well,</p>
<p style="text-align: right;">47</p> <p>1 going to do it, fair?</p> <p>2 MR. TAKENOUCHI: Objection to form,</p> <p>3 speculation.</p> <p>4 THE WITNESS: They are all competitors to</p> <p>5 each other, and they don't want a different set of</p> <p>6 rules for me than for you.</p> <p>7 BY MR. OLSON:</p> <p>8 Q So the answer is that is fair, one might be</p> <p>9 more willing to do it if you knew that others were</p> <p>10 going to do it as well?</p> <p>11 MR. TAKENOUCHI: Objection to form.</p> <p>12 THE WITNESS: I think that would -- yes,</p> <p>13 the answer is yes.</p> <p>14 BY MR. OLSON:</p> <p>15 Q And that's one of the problems that faced</p> <p>16 UEP in working with its members to manage egg</p> <p>17 supply, right?</p> <p>18 A Yes.</p> <p>19 Q In other words, if an individual producer</p> <p>20 is doing it on its own, it might be against its</p> <p>21 self-interest to increase floor space allowance, but</p> <p>22 would be in its interest if it was done jointly</p> <p>23 across the industry?</p> <p>24 MR. TAKENOUCHI: Objection; misstates prior</p> <p>25 testimony.</p>	<p style="text-align: right;">49</p> <p>1 this is the rule of thumb or this is what most</p> <p>2 people are doing and they are going down the wrong</p> <p>3 path. For their personal success or failure, if</p> <p>4 they are going down the wrong track, if you use the</p> <p>5 model.</p> <p>6 But this person over here, that's an</p> <p>7 exceedingly good manager or this person is a</p> <p>8 terrible manager, they have totally different</p> <p>9 reactions. These people over here will go broke --</p> <p>10 bankrupt. These people over here may make a very</p> <p>11 good living. So it's a matter of audience. And</p> <p>12 when I use the word "average," there really is no</p> <p>13 such thing. But you do have variable audience out</p> <p>14 there that these things we are talking about affect</p> <p>15 everybody differently.</p> <p>16 BY MR. OLSON:</p> <p>17 Q Did you have ideas for how UEP could help</p> <p>18 egg producers manage egg supply jointly?</p> <p>19 MR. TAKENOUCHI: Objection to form.</p> <p>20 THE WITNESS: Clarify your question.</p> <p>21 BY MR. OLSON:</p> <p>22 Q Did you have ideas for how UEP could help</p> <p>23 egg producers work together to manage egg supply?</p> <p>24 MR. TAKENOUCHI: Same objection.</p> <p>25 THE WITNESS: Well, I've used the</p>

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<p>1 expression persuasion as opposed to regulation. 2 There are examples of regulation where you and I 3 both must do the same thing. Europe is a good 4 example of that going on right now. Cages are 5 disallowed in countries that still wish to run 6 cages. 7 So persuasion without penalty is a pretty 8 good tool. If you can do it by friendship and 9 relationship, if you can do it by example, but 10 you're trying to persuade people to look at their 11 books, look at their records, look at it from this 12 viewpoint and this viewpoint. Are you considering 13 taxes, are you considering labor costs, and so on. 14 So persuasion and education is a very important part 15 of this. 16 BY MR. OLSON: 17 Q Do you recall making a recommendation that 18 UEP take a stronger stand on the issue of space 19 allowances? 20 A Sure, yes. 21 Q And what was the reason for that 22 recommendation? 23 MR. TAKENOUCHI: Objection to form. 24 THE WITNESS: Because I know that if we 25 reduce the number of birds in the United States,</p>	<p>1 A That's true. 2 Q And that's the topic you spoke on over the 3 course of your 55 years, correct? 4 A Yes. 5 Q So we touched on a lot of these issues, but 6 I just wanted to go over a couple of them. 7 Let's look at slide 8 on the second page. 8 The slide is entitled, "Production Change vs Egg 9 Income"? 10 A Yes. 11 Q And there is a little graph here, and the 12 reference to a 1:4.5 ratio. 13 Can you just describe what information is 14 conveyed on slide 8? 15 A This is titled, "Production Change vs Egg 16 Income," and then it says, "(1:4.15 ratio)." 17 It says that for each 1 percent change in 18 production, that the egg price will change in the 19 opposite direction 4 1/2 percent. Percent, not 20 cents. Percent, not cents. And then the graph 21 depicts that relationship. 22 Q So, in other words -- okay. Fair enough. 23 Let's move on. 24 Let's look at slide 14 titled "Factors" -- 25 A 14?</p>
51	53
<p>1 that the egg producers in the United States will 2 have a more profitable relationship, set of results. 3 I've looked at costs and income and profits 4 for 55 years, and I've done studies every year for 5 55 years, so I feel like I have a feel for the 6 general health of this industry. And, therefore, I 7 think I'm entitled to use my experience to make 8 recommendations. 9 (Deposition Exhibit 2 was marked for 10 identification by the court reporter 11 and is attached hereto.) 12 BY MR. OLSON: 13 Q Let me hand you what we've marked Bell 2. 14 A Sure. Yeah, I've seen this. 15 Q Okay. Just give me a moment here. 16 And Bell 2 is Bates-stamped, for the 17 record, BELL-D-00031284 through -31295. 18 Mr. Bell, can you identify this document 19 for us; in other words, just generally describe what 20 it is? 21 A This is, obviously, a speech and these are, 22 obviously, slides, and it was done in 1992, and I 23 don't know where. 24 Q And the title of this speech was "Managing 25 the Nation's Laying Flock"?</p>	<p>1 Q Yes. It is titled, "Factors Which Have 2 Largest Impact on National Egg Production." 3 A Uh-huh. 4 Q And listed are "Cage Density," "Flock 5 Recycling," "Age" and "Exports." 6 Do you see that? 7 A That's where you got your questions from. 8 Q And we discussed those factors already, 9 right? 10 A Yes. 11 Q Under "Exports" you wrote, "'Release valve' 12 for surplus production." 13 Can you explain what that means? 14 A Release valve is when pressure gets a 15 little high -- a little too high for your cooking or 16 whatever it is you're running a plant of some kind. 17 Release valve allows some of the volume to escape, 18 and I guess that's why I used that term. 19 Q And was that something that was practiced 20 in the U.S. egg industry, to your knowledge? 21 MR. TAKENOUCHI: Objection to form. 22 THE WITNESS: The percentage of eggs that 23 have gone overseas, which includes Mexico, it's 24 usually the Asian market, and we have product eggs, 25 as well as shellings.</p>

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<p style="text-align: right;">54</p> <p>1 Historically, it's been about 2 percent.</p> <p>2 That's not much, but if you apply that 2 percent to</p> <p>3 the formula that we just looked at, it becomes 9,</p> <p>4 doesn't it? 4 1/2 times 2.</p> <p>5 BY MR. OLSON:</p> <p>6 Q Right.</p> <p>7 A That 2 was the total. If you change the 2</p> <p>8 to the 4 and increase your exports, that's what</p> <p>9 we're talking about.</p> <p>10 Now, nobody says our eggs have to stay</p> <p>11 within our boundaries, because that's a market too,</p> <p>12 t-o-o. And, therefore, individual companies will</p> <p>13 choose that market, especially if the price is</p> <p>14 depressed.</p> <p>15 Q All right. Let's look at slide 37. It is</p> <p>16 titled "Supply Management Systems."</p> <p>17 A 37? Okay.</p> <p>18 Q Are you there?</p> <p>19 A Uh-huh -- yes.</p> <p>20 Q And I think we've touched on some of these</p> <p>21 points as well. Here you lay out in bullet form</p> <p>22 four different supply management systems, right?</p> <p>23 A Yes.</p> <p>24 Q The first one is "Quota schemes," and you</p> <p>25 say that they've usually failed; is that right?</p>	<p style="text-align: right;">56</p> <p>1 specific -- well, they are in a specific order. But</p> <p>2 I'm not giving more weight to one versus the other,</p> <p>3 I guess, is what I'm trying to say.</p> <p>4 The welfare question has certain natural</p> <p>5 outcomes, many outcomes, positive and negative. And</p> <p>6 so I don't want you to get the opinion that that's</p> <p>7 the only reason why we have welfare.</p> <p>8 BY MR. OLSON:</p> <p>9 Q We're going to get into those.</p> <p>10 A Okay.</p> <p>11 Q But I just wanted to -- as far as the</p> <p>12 information being conveyed on this slide 37 --</p> <p>13 A Basically, yes.</p> <p>14 Q -- in the early 1990s was one possible</p> <p>15 supply management system using welfare guidelines?</p> <p>16 A That's an example, yes.</p> <p>17 Q And that's something you recognized at the</p> <p>18 time, right?</p> <p>19 A Yes.</p> <p>20 Q And is that something that you discussed</p> <p>21 with the folks at UEP, like Mr. Gregory or Al Pope?</p> <p>22 MR. TAKENOUCHI: Objection; form.</p> <p>23 THE WITNESS: This was written in 1992,</p> <p>24 right? When did Mr. Gregory come on board?</p> <p>25 I'm not supposed to ask questions.</p>
<p style="text-align: right;">55</p> <p>1 A Yes.</p> <p>2 Q The second one is "Voluntary -</p> <p>3 Self-Interest." The third is "Guidelines," it says</p> <p>4 "(e.g. welfare)"?</p> <p>5 A Yes.</p> <p>6 Q And the last one is, "Persuasion based upon</p> <p>7 sound data," and it says, "e.g. UEP"?</p> <p>8 A Yes.</p> <p>9 Q The point you're making, particularly the</p> <p>10 last bullet, is that as of this time, early 1990,</p> <p>11 UEP, UEP supply management system, was a</p> <p>12 persuasion-based approach using data?</p> <p>13 MR. TAKENOUCHI: Objection to form,</p> <p>14 foundation.</p> <p>15 THE WITNESS: Not exclusively. I think</p> <p>16 they were involved -- this would also be involved in</p> <p>17 voluntary -- I think they would also be involved in</p> <p>18 guidelines.</p> <p>19 BY MR. OLSON:</p> <p>20 Q Okay. And here is a place where you're</p> <p>21 pointing out that welfare guidelines can be used as</p> <p>22 a supply management system, correct?</p> <p>23 MR. TAKENOUCHI: Objection to form.</p> <p>24 THE WITNESS: I'm not giving you a -- I'm</p> <p>25 not weighting these or they are not in any</p>	<p style="text-align: right;">57</p> <p>1 BY MR. OLSON:</p> <p>2 Q You know, that's a fair one, and I should</p> <p>3 know. Maybe we'll try to get the answer to that for</p> <p>4 you. But I'm referring to at any time. Speak at</p> <p>5 any time.</p> <p>6 A Ask the question again.</p> <p>7 Q Okay. This idea of using welfare</p> <p>8 guidelines as part of a supply management system, is</p> <p>9 that one you recall discussing at any time with</p> <p>10 Al Pope or Gene Gregory?</p> <p>11 MR. TAKENOUCHI: Objection; form.</p> <p>12 THE WITNESS: Well, the fact that it's here</p> <p>13 in this document and then they receive this document</p> <p>14 and they may send this document to their membership</p> <p>15 and they have a board of directors. So I would</p> <p>16 expect this particular slide, as you selected this</p> <p>17 particular slide, to be discussed.</p> <p>18 BY MR. OLSON:</p> <p>19 Q And is it possible that on other occasions</p> <p>20 you would have discussed that topic with UEP</p> <p>21 officers or its board of directors?</p> <p>22 MR. TAKENOUCHI: Objection; form,</p> <p>23 speculation.</p> <p>24 THE WITNESS: This slide?</p> <p>25 BY MR. OLSON:</p>

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<p style="text-align: right;">58</p> <p>1 Q No, just that concept.</p> <p>2 A That concept?</p> <p>3 MR. TAKENOUCHI: Objection to form.</p> <p>4 THE WITNESS: Well, I know what you're</p> <p>5 driving at, but --</p> <p>6 BY MR. OLSON:</p> <p>7 Q Well, I'm actually just wondering, and it's</p> <p>8 fair whenever I ask a question to say "I just don't</p> <p>9 recall." I asked you a question if you recall</p> <p>10 discussing it. You pointed to a slide --</p> <p>11 A I don't have a photographic memory.</p> <p>12 MR. GODLSTEIN: Don, you're doing a great</p> <p>13 job, but try to remember what Steig said to you</p> <p>14 about not talking over him when he's talking, and</p> <p>15 he'll do the same for you, so we don't drive our</p> <p>16 court reporter crazy. Okay?</p> <p>17 THE WITNESS: Thank you.</p> <p>18 In the conversations with UEP officials</p> <p>19 and/or members, board members, or just plain old</p> <p>20 members, I'm sure we spelled out that if you do this</p> <p>21 from a welfare standpoint, that it's going to have</p> <p>22 effects on price.</p> <p>23 And if you allow 67 square inches -- are</p> <p>24 you familiar with that number?</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">60</p> <p>1 production was to use a long-term cage space</p> <p>2 program?</p> <p>3 A That's one of the easiest ways, easiest to</p> <p>4 demonstrate.</p> <p>5 Q Just to pause there, do you recall</p> <p>6 approximately when you reached the conclusion that</p> <p>7 that would be one of the easiest ways to accomplish</p> <p>8 that goal?</p> <p>9 A Well, the question of optimum cage space,</p> <p>10 one of the outcomes is it is going to change the</p> <p>11 volume of eggs. And we've already discussed the</p> <p>12 volume of egg relationship to egg price.</p> <p>13 So the very first experiment I did in the</p> <p>14 early '60s that showed a dramatic difference in egg</p> <p>15 numbers, but from the same cage, that's the start of</p> <p>16 a 55-year recommendation, and it still exists today.</p> <p>17 Q And was there a time when you concluded</p> <p>18 that in the United States an industry-wide program</p> <p>19 involving cage space guidelines was the best way to</p> <p>20 manage U.S. egg supply?</p> <p>21 MR. TAKENOUCHI: Object to form.</p> <p>22 THE WITNESS: It would result -- it would</p> <p>23 get results the fastest, it would be the easiest to</p> <p>24 apply, but everyone wouldn't be in agreement with</p> <p>25 it.</p>
<p style="text-align: right;">59</p> <p>1 Q Yes.</p> <p>2 A And Don Bell says you should give them 72,</p> <p>3 you know there's -- or the other direction, that you</p> <p>4 can affect it up or down, the results, because</p> <p>5 Don Bell is not going to say that 72 is the number,</p> <p>6 nor is the welfare committee or anything like that.</p> <p>7 So I hope, in my discussions with UEP, that</p> <p>8 the principles will be on the table and that we will</p> <p>9 give an equal fairness to too many chickens or too</p> <p>10 few chickens, because they are both involved.</p> <p>11 Q And would it be fair to say that you</p> <p>12 recognized at some point that the primary way to</p> <p>13 reduce nationwide chick hatch was through a</p> <p>14 long-term cage space program?</p> <p>15 MR. TAKENOUCHI: Objection to form.</p> <p>16 THE WITNESS: Cage space program, is that</p> <p>17 what you said?</p> <p>18 Hatches hasn't even come into the</p> <p>19 discussion yet, so you brought it in there.</p> <p>20 BY MR. OLSON:</p> <p>21 Q Okay. Sorry. We're just talking about</p> <p>22 nationwide egg production.</p> <p>23 Would it be fair to say that, based on your</p> <p>24 work, at a certain point you recognized that the</p> <p>25 primary way the industry could manage nationwide egg</p>	<p style="text-align: right;">61</p> <p>1 BY MR. OLSON:</p> <p>2 Q And were these concepts about that type of</p> <p>3 approach being fast and easy to apply ones that you</p> <p>4 discussed with UEP and its officials from time to</p> <p>5 time?</p> <p>6 A Yes, uh-huh.</p> <p>7 Q Now, we've talked about animal welfare</p> <p>8 briefly.</p> <p>9 MR. GODLSTEIN: Steig, before we go on,</p> <p>10 we've been going about an hour now. Would this be a</p> <p>11 convenient time to take a ten-minute break?</p> <p>12 MR. OLSON: Sure, if the witness would like</p> <p>13 that, that would be fine.</p> <p>14 MR. GODLSTEIN: Thanks.</p> <p>15 THE VIDEOGRAPHER: We are off the record.</p> <p>16 The time is 11:00 a.m.</p> <p>17 (Recess.)</p> <p>18 THE VIDEOGRAPHER: We are back on the</p> <p>19 record. The time is 11:15 a.m.</p> <p>20 MR. GODLSTEIN: So let's go for another</p> <p>21 hour or so, and then at that point I'd like to step</p> <p>22 out with Mr. Bell and see where we are and whether</p> <p>23 we can keep going a little longer or what, and then</p> <p>24 we'll make a decision at that point. Okay?</p> <p>25 MR. OLSON: Absolutely.</p>

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<p style="text-align: right;">62</p> <p>1 Q Mr. Bell, if you don't even make an hour</p> <p>2 and want to break before then, let us know.</p> <p>3 A Keep at it.</p> <p>4 Q Okay. Now, before the break, this concept</p> <p>5 of chick hatch came up. Now, is one way to reduce</p> <p>6 egg supply focusing on reducing chick hatch?</p> <p>7 A Yes.</p> <p>8 Q And what is -- generally speaking, what is</p> <p>9 chick hatch reduction?</p> <p>10 A Chick hatch is adult chickens six months</p> <p>11 pre, prior to the adult chicken. So it takes six</p> <p>12 months to grow. So if you have an indication that</p> <p>13 you have an increase in chick hatch, this is also an</p> <p>14 indication you're going to have more adult chickens</p> <p>15 six months later.</p> <p>16 And so it was given a lot of attention in</p> <p>17 earlier years, the direction of chick hatch, but</p> <p>18 there are so many factors -- if a person is going</p> <p>19 broke, he doesn't buy as many chicks, and that's the</p> <p>20 same as the total volume, it's the whole industry.</p> <p>21 If the industry is in trouble, they won't buy as</p> <p>22 many chicks. They don't buy as many chicks, and</p> <p>23 that's what gives us cycles. The cycle in the</p> <p>24 industry is about five years, and that's why we talk</p> <p>25 about five-year averages, because that's the period</p>	<p style="text-align: right;">64</p> <p>1 factors affecting egg price, all of these have to be</p> <p>2 considered collectively.</p> <p>3 Q And when you refer to that list, you're</p> <p>4 referring to the list in Bell Exhibit 2, the slide</p> <p>5 you prepared in the early '90s?</p> <p>6 A Which one was it?</p> <p>7 Q Exhibit 2, slide 37?</p> <p>8 A 37. That and other documents that you</p> <p>9 folks all have. You came to my house and took all</p> <p>10 my documents, remember?</p> <p>11 Q We didn't take all your documents.</p> <p>12 A Oh, yes, you did, you did. You searched</p> <p>13 under my carpet.</p> <p>14 Q We'll hold that to one side.</p> <p>15 A Okay.</p> <p>16 Q Would it be fair to say that one way that</p> <p>17 was discussed to provide a long-term solution to the</p> <p>18 supply issue was to have a long-term cage space</p> <p>19 program?</p> <p>20 MR. TAKENOUCHI: Objection to form.</p> <p>21 THE WITNESS: I'm sure it was discussed by</p> <p>22 some people. I don't -- I'm trying to think if I</p> <p>23 did it. You want to know if I did it?</p> <p>24 BY MR. OLSON:</p> <p>25 Q Yes, if you were involved in the</p>
<p style="text-align: right;">63</p> <p>1 of time when you have to consider all these issues.</p> <p>2 Q And was this a challenge in the industry,</p> <p>3 how to try to address the cyclical nature of chick</p> <p>4 hatch and egg production?</p> <p>5 A It is a cyclical fact of life, and you</p> <p>6 can -- I've got charts I've used in my speeches</p> <p>7 where you can see a profitable industry, too many</p> <p>8 chicks, too many adults, too many eggs, an</p> <p>9 unprofitable industry and then back around.</p> <p>10 And so this has got to be realized, because</p> <p>11 it is a cyclic industry. You can't just look at one</p> <p>12 year at a time and say it means anything.</p> <p>13 Q Now, did you give some thought as part of</p> <p>14 your work for the egg industry on how to overcome</p> <p>15 the cyclical nature and have a long-term solution to</p> <p>16 the supply issue?</p> <p>17 A Yes, we've made a proposal with UEP and</p> <p>18 presented at one of their meetings about quotas. A</p> <p>19 quota is a regulatory concept.</p> <p>20 Q And --</p> <p>21 A Go ahead.</p> <p>22 Q And aside from quotas, did you have other</p> <p>23 ideas about how to address the long-term solution</p> <p>24 for the supply issue?</p> <p>25 A The entire list that you have copies of</p>	<p style="text-align: right;">65</p> <p>1 discussions.</p> <p>2 A Well, obviously, I am concerned about</p> <p>3 managing the nation's laying flock from the</p> <p>4 standpoint of the health of the industry. And if</p> <p>5 that's one -- we listed four of them over here, or</p> <p>6 whatever it is, there is a longer list someplace</p> <p>7 else that you've got. Many, many, many factors.</p> <p>8 Anything that the farmer does to reduce</p> <p>9 cost or increase income, bird numbers are involved.</p> <p>10 Q All right. Let's talk about the --</p> <p>11 actually, another issue came up before the break.</p> <p>12 You were talking about cage sizes, and you mentioned</p> <p>13 67 inches versus 72 inches.</p> <p>14 A Right.</p> <p>15 Q Now, you were a member of the Scientific</p> <p>16 Advisory Committee, correct?</p> <p>17 A Yes.</p> <p>18 Q Why didn't the Scientific Advisory</p> <p>19 Committee just insist on a minimum of 72 inches for</p> <p>20 every hen?</p> <p>21 MR. TAKENOUCHI: Objection; leading.</p> <p>22 THE WITNESS: The optimum numbers battered</p> <p>23 around the industry worldwide and the United States</p> <p>24 varies from 150 inches to 50 inches. So the</p> <p>25 committee -- now we're talking about the industry</p>

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<p style="text-align: right;">66</p> <p>1 advisory committee, right?</p> <p>2 BY MR. OLSON:</p> <p>3 Q We'll call it the Scientific Advisory</p> <p>4 Committee --</p> <p>5 A Scientific, that's fine.</p> <p>6 Several people were assigned this question,</p> <p>7 to take a look at the research.</p> <p>8 Well, the research is just enormous on this</p> <p>9 question. And all the answers aren't the same.</p> <p>10 Q But no one is really -- there's no</p> <p>11 reputable research saying 50 inches is optimal for</p> <p>12 the welfare of hens, is there?</p> <p>13 MR. TAKENOUCHI: Objection to form.</p> <p>14 THE WITNESS: I said economically optimal.</p> <p>15 BY MR. OLSON:</p> <p>16 Q Oh, economically optimal? Understood.</p> <p>17 A Most of the research went on pre humane</p> <p>18 society, if you understand what I'm talking about.</p> <p>19 All the research that went on before that had to do</p> <p>20 with production efficiencies, economics, how many</p> <p>21 eggs, you know, mortality, all those things.</p> <p>22 The human society insisted that you needed</p> <p>23 to bring in welfare issues, such as frustration,</p> <p>24 peck order, a totally different ball game than I was</p> <p>25 involved with.</p>	<p style="text-align: right;">68</p> <p>1 A What do I recall?</p> <p>2 Q I mean, do you recall the conversation, do</p> <p>3 you recall how it happened, do you recall anything</p> <p>4 about it?</p> <p>5 A No. It's just a long-term relationship</p> <p>6 with these people, all the way to the farmer, that</p> <p>7 they endorsed me to be on the committee and they</p> <p>8 wished me to be on the committee because of my</p> <p>9 experience.</p> <p>10 Q Your experience with economic issues?</p> <p>11 A All issues, all the welfare issues, except</p> <p>12 for these frustration issues, yeah.</p> <p>13 Q That's what I want to understand.</p> <p>14 A I mean, density, molting, beak trimming,</p> <p>15 housing, all those issues.</p> <p>16 Q If we talk about density, for example --</p> <p>17 A Sure.</p> <p>18 Q -- did you have experience on how density</p> <p>19 would affect the welfare of the chicken?</p> <p>20 MR. TAKENOUCHI: Objection to form,</p> <p>21 definition of "welfare."</p> <p>22 THE WITNESS: It is what you include in the</p> <p>23 welfare.</p> <p>24 As far as frustration is concerned, no. As</p> <p>25 far as egg numbers are concerned, yes. As far as</p>
<p style="text-align: right;">67</p> <p>1 We had measurable things. I don't know</p> <p>2 whether you're frustrated right this moment or not,</p> <p>3 you see, we're supposed to do that with the chicken.</p> <p>4 I can't tell humans if they are frustrated or if</p> <p>5 you're high on the peck order or low on the peck</p> <p>6 order. But there is about 20 different behavioral</p> <p>7 characteristics that the scientists who work in that</p> <p>8 area are concerned about.</p> <p>9 Well, on the advisory committee we had one</p> <p>10 or two that had that background. I didn't have that</p> <p>11 background. I didn't -- I was only interested in</p> <p>12 egg numbers, egg size, mortality and what it all</p> <p>13 meant economically.</p> <p>14 Q And is that why you were chosen for the</p> <p>15 Scientific Advisory Committee, to your knowledge?</p> <p>16 MR. TAKENOUCHI: Objection; foundation.</p> <p>17 THE WITNESS: I was asked to be on the</p> <p>18 committee by UEP.</p> <p>19 BY MR. OLSON:</p> <p>20 Q By who at UEP?</p> <p>21 A Good question. Gene or AI, I'm not sure</p> <p>22 which. The rest of the committee was appointed by</p> <p>23 the appointed chair.</p> <p>24 Q And what do you recall about being asked by</p> <p>25 UEP to be on the committee?</p>	<p style="text-align: right;">69</p> <p>1 mortality -- mortality is a welfare issue, and</p> <p>2 mortality, yes.</p> <p>3 BY MR. OLSON:</p> <p>4 Q Okay. So your experience with those types</p> <p>5 of issues that you --</p> <p>6 A Measurable issues.</p> <p>7 Q Measurable and economic issues?</p> <p>8 A Yes. Together, yes.</p> <p>9 Q All right. Now, wouldn't it be fair to say</p> <p>10 that from the standpoint of the hen, a minimum of 72</p> <p>11 inches is required to let a hen do any of the</p> <p>12 natural behaviors that a hen does, like stretch its</p> <p>13 wings?</p> <p>14 MR. TAKENOUCHI: Objection; leading. It</p> <p>15 doesn't distinguish between different types of hens.</p> <p>16 THE WITNESS: That question when you added</p> <p>17 stretch their wings is a matter of physical size and</p> <p>18 movability around the cage. Part of the rules say</p> <p>19 they can't even touch each other.</p> <p>20 BY MR. OLSON:</p> <p>21 Q Which rule?</p> <p>22 A Part of the Proposition 2.</p> <p>23 Q Okay. But I'm just talking --</p> <p>24 A I know you're not, but that's a welfare --</p> <p>25 Q Isn't the scientific consensus that for a</p>

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<p>1 hen just to stretch out its wings it needs a minimum 2 of 72 inches? No? 3 A No. 4 Q Okay. Now, over what period -- do you 5 recall when you started working on the Scientific 6 Advisory Committee? 7 A Day 1. 8 Q So this is sometime in 1999? 9 A You have the record. 10 Q I believe we have February 1999. Does that 11 sound about right? 12 A (No audible response.) 13 MR. OLSON: I'll introduce that. 14 THE WITNESS: When you are retired, years 15 go very fast. 16 MR. OLSON: That's fair. 17 (Deposition Exhibit 3 was marked for 18 identification by the court reporter 19 and is attached hereto.) 20 BY MR. OLSON: 21 Q Let me hand you what we marked Bell 3. 22 This was previously Gregory 6. 23 A Thank you. 24 Q It is a United Voices publication. 25 Mr. Bell, did you receive United Voices</p>	<p>1 question. 2 THE WITNESS: Sorry. 3 BY MR. OLSON: 4 Q So just to be clear, the members listed on 5 the right-hand side of this document, to your 6 knowledge, were the members of the Scientific 7 Advisory Committee as of February 1999, correct? 8 A They were not the only members. 9 Q Were there other members? 10 A I don't remember when Bill Chase became a 11 member. 12 Q Okay. 13 A But Bill Chase was one of the early 14 members, and he was veterinarian from a private 15 company. 16 Q But as of early 1999, at least these people 17 identified -- 18 A At least, yeah. 19 Q -- were members of the committee, correct? 20 A Right. 21 Q Now, when you served -- you can put that 22 down. 23 When did you stop serving on the Scientific 24 Advisory Committee? 25 A Isn't that part of the termination?</p>
71	73
<p>1 publications? 2 A Yes. 3 Q All right. And this publication is dated 4 February 22nd, 1999. 5 Do you see that? 6 A Yes. 7 Q And it refers to -- 8 A The first meetings. 9 Q -- the first meeting, the February 12th and 10 13th? 11 A Yes. 12 Q Does that refresh your recollection about 13 when you started? 14 A Yes. 15 Q Now, this has a list of the members of the 16 Scientific Advisory Committee on the right-hand 17 side -- 18 A Yes. 19 Q -- do you see that? 20 A Yes. 21 Q Is that an accurate list, to your 22 knowledge, of who the members -- 23 A At that time, yes. 24 MR. GODLSTEIN: Just slow down a little bit 25 because you're jumping before he gets to finish his</p>	<p>1 Q Was that when you finally retired July 1, 2 2009? 3 A Did it say anything about the committee? 4 Q Yes, it does. It says it will end your 5 role. 6 A Yes, as a member of the Scientific Advisory 7 Committee, so that will be the date. 8 Q So you served on that committee over 9 approximately early 1999 through July 2009, correct? 10 A Sounds like ten years, right. 11 Q About ten years. 12 During the period that you served on the 13 Scientific Advisory Committee, were you paid any 14 form of compensation by UEP? 15 A I believe all I received was expenses to go 16 to the meetings, because I had no funds otherwise. 17 Q Mr. Bell, isn't it the case that you were 18 paid by UEP -- 19 A Oh, I was on retainer, of course. 20 Q That's what I want to talk about. 21 A You didn't ask it that way. 22 Q Oh, sorry. 23 So during this period -- during most of the 24 period you were on the Scientific Advisory 25 Committee, you were on retainer by UEP?</p>

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<p>1 A Yes.</p> <p>2 Q And as part of that retainer, you were paid</p> <p>3 approximately \$15,000 a year, correct?</p> <p>4 A Approximately, yes.</p> <p>5 Q Okay. And you received compensation to</p> <p>6 attend Scientific Advisory Committee meetings as</p> <p>7 well?</p> <p>8 MR. TAKENOUCHI: Objection to form,</p> <p>9 "compensation."</p> <p>10 THE WITNESS: Expenses were the only</p> <p>11 additional to my retainer fee. My retainer fee paid</p> <p>12 for about two days of my time a month, and I gave</p> <p>13 them a lot more than two days.</p> <p>14 BY MR. OLSON:</p> <p>15 Q So when you say "expenses," you're</p> <p>16 referring to things like travel expenses?</p> <p>17 A To get to Chicago, or wherever it was.</p> <p>18 Q As part of your work for UEP during that</p> <p>19 period, you were -- did you also go on other trips</p> <p>20 unrelated to the Scientific Advisory Committee?</p> <p>21 A Other trips?</p> <p>22 MR. TAKENOUCHI: Objection; misstates prior</p> <p>23 testimony.</p> <p>24 THE WITNESS: About 400 of them.</p> <p>25 BY MR. OLSON:</p>	<p>1 new. For example, we started out with adult hens,</p> <p>2 we then moved to growing pullets, which are younger</p> <p>3 chickens, and then we went to alternative housing.</p> <p>4 Alternative housing wasn't part of the original</p> <p>5 mandate.</p> <p>6 So there was four or five categories in the</p> <p>7 original mandate, and as we -- I don't know what</p> <p>8 they are talking about today, but the committee</p> <p>9 still exists and they are addressing current issues,</p> <p>10 I guess.</p> <p>11 BY MR. OLSON:</p> <p>12 Q Now, let's talk about, particularly, the</p> <p>13 early years of the committee. How often would the</p> <p>14 committee meet, generally?</p> <p>15 A Oh, I don't think more than twice a year,</p> <p>16 maybe.</p> <p>17 Q And would those be in-person meetings?</p> <p>18 A In person?</p> <p>19 Q Yes.</p> <p>20 A Always.</p> <p>21 Q And was there any -- were there any formal</p> <p>22 rules that you were aware of that governed how the</p> <p>23 meetings would take place?</p> <p>24 A No. Same kind of meeting as we have right</p> <p>25 here. We have a chairperson, and if somebody has</p>
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<p>1 Q Okay. And UEP would compensate you for</p> <p>2 those --</p> <p>3 A No, no, no. The inviter would pay my</p> <p>4 expenses to go to other meetings. That's the</p> <p>5 question you asked.</p> <p>6 Q Okay. And from time to time UEP would</p> <p>7 invite you to attend meetings?</p> <p>8 A To attend the annual meeting and make a</p> <p>9 presentation.</p> <p>10 Q And you would be paid for that as well?</p> <p>11 A Just transportation, just the expenses.</p> <p>12 Q Okay. What do you recall about what you</p> <p>13 were told was the initial assignment of the</p> <p>14 Scientific Advisory Committee?</p> <p>15 A I suppose it has a lot to do with</p> <p>16 recommendations.</p> <p>17 Q And I don't want you to speculate at all.</p> <p>18 A Okay. Okay. All right.</p> <p>19 No, I don't remember it at all.</p> <p>20 Q Okay. Do you recall whether the mandate of</p> <p>21 that committee changed over time?</p> <p>22 A The mandate of the committee?</p> <p>23 MR. TAKENOUCHI: Objection to form.</p> <p>24 THE WITNESS: The mandate, yes, changed</p> <p>25 over time as we finished one section and added a</p>	<p>1 something to say, they raise their hand, I guess.</p> <p>2 Q So an open discussion?</p> <p>3 A An open discussion, right.</p> <p>4 Q Do you recall there being any procedure for</p> <p>5 taking notes of those discussions or minutes of the</p> <p>6 meetings?</p> <p>7 A We didn't have a stenographer, somebody --</p> <p>8 I think the chair would ask somebody to take some</p> <p>9 notes. Or each of us had an assignment in the first</p> <p>10 place, and you're supposed to bring copies of what</p> <p>11 you're -- of what your report is.</p> <p>12 If it is cage density, this person is</p> <p>13 supposed to bring a report on cage density or</p> <p>14 transportation or whatever it may be.</p> <p>15 But as far as word for word or anything,</p> <p>16 no.</p> <p>17 Q So if we wanted to look for a collection of</p> <p>18 minutes or notes of the meetings, do you have an</p> <p>19 idea of where we would look?</p> <p>20 A Well, I would assume UEP would have a file</p> <p>21 on us. I've got a partial file. I don't -- I can't</p> <p>22 store everything, but the chairperson probably has a</p> <p>23 file, that would be Jeff Armstrong. And UEP -- I</p> <p>24 mean, if they are doing their business, they would</p> <p>25 certainly have a file.</p>

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<p>1 Q And a representative of UEP would always</p> <p>2 attend the meetings; is that right?</p> <p>3 MR. TAKENOUCHI: Objection; form.</p> <p>4 MR. OLSON: Strike that.</p> <p>5 Q Would a representative from UEP attend the</p> <p>6 meetings?</p> <p>7 MR. TAKENOUCHI: Objection to form.</p> <p>8 THE WITNESS: Most or all.</p> <p>9 BY MR. OLSON:</p> <p>10 Q Was that Gene Gregory?</p> <p>11 A Most or all.</p> <p>12 Q Did you have an understanding of why</p> <p>13 Mr. Gregory attended the Scientific Advisory</p> <p>14 Committee meetings?</p> <p>15 MR. TAKENOUCHI: Objection to form,</p> <p>16 foundation.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. OLSON:</p> <p>19 Q What was your understanding?</p> <p>20 A Wanted to see how we were progressing on a</p> <p>21 multitude of topics. Not just animal welfare, per</p> <p>22 se, not just the cage density, per se, but the total</p> <p>23 assignment of recommending the ways we handle our</p> <p>24 chickens.</p> <p>25 Q And would Mr. Gregory participate in the</p>	<p>1 that wasn't -- that wasn't the big feature.</p> <p>2 Q Now, as part of your work on the Scientific</p> <p>3 Advisory Committee, did you believe it was important</p> <p>4 to be practical and realistic about the changes egg</p> <p>5 producers were asked to make?</p> <p>6 A I'm always that way, yes.</p> <p>7 Q And you were that way on the committee as</p> <p>8 well?</p> <p>9 A Yes.</p> <p>10 Q Did you believe, as part of your work on</p> <p>11 that committee, that it was important to consider</p> <p>12 how any changes would impact the profitability of</p> <p>13 the industry?</p> <p>14 A Absolutely, yes.</p> <p>15 Q And as part of your work on the committee,</p> <p>16 did you consider whether any changes would be</p> <p>17 acceptable to egg producers?</p> <p>18 A Well, obviously, I gave a different weight</p> <p>19 to each item. Some I thought would be readily</p> <p>20 acceptable by the industry, and they were, and</p> <p>21 others I thought -- well, an example, 72 inches, as</p> <p>22 you brought up, that was the opinion of one of our</p> <p>23 committee persons who did the report that that's as</p> <p>24 far as you have to go space wise.</p> <p>25 Q That that should be the minimum?</p>
79	81
<p>1 discussion of -- that occurred at these meetings?</p> <p>2 A I think he took a pretty low key -- he</p> <p>3 didn't want to interfere with what we said, or he</p> <p>4 certainly wouldn't tell us what to say. We were a</p> <p>5 bunch of people who each had 20, 30, 40 years of</p> <p>6 experience doing research and communications and so</p> <p>7 on, and I think he took a back seat.</p> <p>8 Q But from time to time would he share his</p> <p>9 views?</p> <p>10 A He would do what?</p> <p>11 Q Share his views?</p> <p>12 A We knew his views because he had his</p> <p>13 newsletter that you showed me here, and we all</p> <p>14 received that. And he's interviewed or given</p> <p>15 speeches all over the place, so we have a pretty</p> <p>16 good idea what his views were.</p> <p>17 Q And would he share those views from time to</p> <p>18 time at the meetings?</p> <p>19 A With the committee?</p> <p>20 Q Yes.</p> <p>21 A He might report back to us that the UEP</p> <p>22 board of directors or their Animal Welfare Committee</p> <p>23 thinks you're being too hard on your recommendations</p> <p>24 or that you haven't discussed this part of the</p> <p>25 recommendation. Sure, he would have comments, but</p>	<p>1 A That should be the maximum.</p> <p>2 Q The minimum?</p> <p>3 A Maximum.</p> <p>4 Q You didn't set the maximum height --</p> <p>5 A Oh, pardon me. That that number would be</p> <p>6 the -- let me just think what you're saying here.</p> <p>7 Q Let me try it.</p> <p>8 A Go ahead.</p> <p>9 Q I think you're saying it is phased in over</p> <p>10 time?</p> <p>11 A Yes, of course.</p> <p>12 Q There is an ultimate number. Someone</p> <p>13 thought that ultimate number should be 72?</p> <p>14 A I thought that our evidence showed that it</p> <p>15 could go higher than 72, and I didn't win that</p> <p>16 argument.</p> <p>17 So the person who wrote this paper reviewed</p> <p>18 all the literature she could find and decided that</p> <p>19 67 would be the number.</p> <p>20 Now I read in the press today that they</p> <p>21 want to give one chicken per acre.</p> <p>22 Q And who is this person you're referring to?</p> <p>23 A Right now?</p> <p>24 Q No, when you said that --</p> <p>25 A That would be the person who did the</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">82</p> <p>1 report, Joy Mench.</p> <p>2 Q Just to be clear, you believe Ms. Mench</p> <p>3 said that --</p> <p>4 MR. GODLSTEIN: Doctor.</p> <p>5 BY MR. OLSON:</p> <p>6 Q Doctor, thank you.</p> <p>7 Dr. Mench said the number in the guidelines</p> <p>8 should not be 72, it should be 67?</p> <p>9 A 67. That's where she plateaus the response</p> <p>10 of the chickens. Nobody has worked with the 140 or</p> <p>11 150.</p> <p>12 Europeans, they have rules of that nature,</p> <p>13 but we are now talking about colony cages, and</p> <p>14 nobody has worked with, nobody has -- when I say</p> <p>15 they haven't worked with them, they haven't done</p> <p>16 statistically valid replicated studies with</p> <p>17 replications. Replications, meaning you repeat the</p> <p>18 results, repeat the results, and you are consistent</p> <p>19 with your answer.</p> <p>20 People who do anecdotal-type things, I</p> <p>21 don't pay attention to them. They are not science.</p> <p>22 Q So how was this decision where you were</p> <p>23 saying it should be 72 and she was saying it should</p> <p>24 be 67, how was the decision ultimately made?</p> <p>25 A It was finally made to use the 67 inch.</p>	<p style="text-align: right;">84</p> <p>1 A "When More Means Less." Okay.</p> <p>2 Q This is a document that is Bates-stamped</p> <p>3 KRGE00020640 through -43, and is Pope Exhibit 3.</p> <p>4 Are you familiar with this document,</p> <p>5 Mr. Bell?</p> <p>6 A Yes, I wrote it.</p> <p>7 Q This is an Egg Economics Update that you</p> <p>8 wrote in April of 1994?</p> <p>9 A Number 154, yes.</p> <p>10 Q And it is titled, "When More Means Less"?</p> <p>11 A Yes.</p> <p>12 Q And what is the point that you are making</p> <p>13 here?</p> <p>14 A When we have more chickens, the industry</p> <p>15 makes less money. And it is all spelled out in the</p> <p>16 graphics form. That's the justification that's</p> <p>17 stated.</p> <p>18 Q And the conclusion that you have here is</p> <p>19 "that for each 1 million hen change," that is in the</p> <p>20 number of hens, "prices change in the opposite</p> <p>21 direction by about 1 cent per dozen"?</p> <p>22 A I don't see where you're seeing that, but</p> <p>23 you should show me -- oh, here down at the bottom.</p> <p>24 That's exactly right.</p> <p>25 Q All right. You can put that aside.</p>
<p style="text-align: right;">83</p> <p>1 Q But what was the process of resolving that</p> <p>2 dispute?</p> <p>3 A I suppose she took -- I don't know if she</p> <p>4 took all the research she could pull together -- I</p> <p>5 need to differentiate here between my research and</p> <p>6 her research. Okay?</p> <p>7 But she pulled together all the published</p> <p>8 data that she could find and plotted against</p> <p>9 production, or whatever it was that she was looking.</p> <p>10 I'm sure she didn't look at it from an economic</p> <p>11 standpoint, because most scientists don't use the</p> <p>12 dollar sign. I do, and that's where my optimum</p> <p>13 might be different than her optimum or maximum, or</p> <p>14 whatever you want to say.</p> <p>15 So my work, by the way, is not published as</p> <p>16 often as her work, because she's used to publishing</p> <p>17 in all the journals. I publish in these newsletters</p> <p>18 that you have right there in front of you. That's</p> <p>19 where I publish my results.</p> <p>20 (Deposition Exhibit 4 was marked for</p> <p>21 identification by the court reporter</p> <p>22 and is attached hereto.)</p> <p>23 BY MR. OLSON:</p> <p>24 Q All right. Let me hand you what we've</p> <p>25 marked Bell 4.</p>	<p style="text-align: right;">85</p> <p>1 (Deposition Exhibit 5 was marked for</p> <p>2 identification by the court reporter</p> <p>3 and is attached hereto.)</p> <p>4 BY MR. OLSON:</p> <p>5 Q Let me hand you what we marked Bell 5.</p> <p>6 A Remember, that was written in 1994. Okay?</p> <p>7 Q But I take it the fundamental conclusion</p> <p>8 that you made in that point about more meaning less,</p> <p>9 that never changed, right?</p> <p>10 MR. TAKENOUCHI: Objection to form.</p> <p>11 THE WITNESS: It changes individual years,</p> <p>12 that's why I stress the need to look at five years</p> <p>13 at a time.</p> <p>14 So if you just take one year, that rule</p> <p>15 doesn't apply. You have to look at a series of</p> <p>16 years. And it's over time that that rule applies.</p> <p>17 Now, with our egg prices today versus what</p> <p>18 they were ten years ago, the answer is going to be</p> <p>19 different because we have dollar eggs now and we had</p> <p>20 50 cent eggs then.</p> <p>21 BY MR. OLSON:</p> <p>22 Q Is the specific number of the change going</p> <p>23 to be different, or is the conclusion about more</p> <p>24 meaning less going to be different?</p> <p>25 A I think more meaning less will hold true</p>

22 (Pages 82 to 85)

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<p style="text-align: right;">86</p> <p>1 forever, unless you have regulatory government 2 involvement, or something like that. But free 3 enterprise, I think, it holds forever. 4 What do we have here? 5 Q I've handed you what's been marked Bell 5. 6 It is Bates-stamped BELL-D-00032755. 7 And let me know when you've reviewed it. 8 A You want me to read it in detail? 9 Q Just skim it and let us know when you're 10 done. 11 MALE VOICE ON THE TELEPHONE: I'm sorry. 12 Can you repeat that number again, please? 13 MR. OLSON: BELL-D-00032755. 14 MALE VOICE ON THE TELEPHONE: Thank you. 15 THE WITNESS: Okay. I think I understand. 16 BY MR. OLSON: 17 Q Now, can you identify this as a letter you 18 sent to Al Pope on March 17, 1995? 19 A Yes, uh-huh. 20 Q And it refers to some UEP members bashing 21 molting. 22 Do you know what that's referring to? 23 A It's a controversial subject that everyone 24 went from no molting to practically everyone went to 25 molting.</p>	<p style="text-align: right;">88</p> <p>1 a much greater service by recommending an increase 2 in the use of molting rather than its elimination, 3 right? 4 MR. TAKENOUCHI: Objection to form. 5 THE WITNESS: That's what it says. 6 BY MR. OLSON: 7 Q And that was your view at the time? 8 A Do I still agree with it? 9 Q No. Was that your view at the time? 10 A That's what it says. That was my view, 11 yeah. 12 Q And molting -- at this time when you're 13 talking about molting you're talking about -- it's 14 called induced molting? 15 A That's the new term, yeah. 16 Q And that involves not giving a hen any feed 17 for a period of time? 18 A At that time, that was the way to do it. 19 And it's always been the best way, but it is also 20 more controversial. 21 Q And then you say, "another option would be 22 for UEP to take a stronger stand on the question of 23 space allowances." 24 Do you see that? 25 A Getting my longstanding recommendation,</p>
<p style="text-align: right;">87</p> <p>1 And during that transition period there is 2 going to be considerable disagreement. And talking 3 about -- let's see. 4 "Molting is not responsible for 5 overproduction any more than feed is," that's sort 6 of my concluding sentence there in the middle of the 7 discussion. 8 Q I take it during this transition period 9 some people thought molting was the cause of 10 overproduction? 11 A Some people would blame everything but 12 themselves, of course, yes. 13 Q And the point you make here is that, in 14 fact, molting -- 15 A Reduces costs. 16 Q -- reduces costs? 17 A But it lowers production as an outcome. 18 But what is the individual poultryman concerned 19 about? His profitability. And if he loses some 20 production, then he grits or bites his teeth, or 21 whatever you say, and says, well, that's just one of 22 the costs of molting. But the main thing is he 23 doesn't have to buy so many chickens. 24 Q And so for those reasons, you wrote to 25 Mr. Pope that you think UEP would do its membership</p>	<p style="text-align: right;">89</p> <p>1 again, to this person. 2 Q So your point is this is the type of 3 recommendation you made to Mr. Pope on multiple 4 occasions? 5 A I wouldn't just stop talking to him just 6 about molting if I had a chance to dig him on the 7 other. 8 Q And what did you mean by "UEP taking a 9 stronger stand on the question of space allowances"? 10 A This was written before the advisory 11 committee, right, 1997? 12 Q Right. 13 A That's the time limits. When it was 14 written was before any of these recommendations, 67 15 inches, any of that was brought forward. 16 So at that time people were going 48 17 inches, 45 inches. And, you know, that's way beyond 18 our analyses, economic or otherwise. And you could 19 lose 30, 40 eggs per bird. 20 Q What did you have in mind about UEP taking 21 a stronger stand on that question? 22 A In their persuasion capability with their 23 newsletters, wherever that one went, Industry Voices 24 it is called, to encourage people or persuade people 25 to take a harder look at your density question. If</p>

23 (Pages 86 to 89)

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<p style="text-align: right;">90</p> <p>1 you look at the NAHMS study, N-A-H-M-S study, it was</p> <p>2 a federal study of density across the United States,</p> <p>3 and molting, by the way, and you see this wide range</p> <p>4 of participation and, therefore, you have a lot of</p> <p>5 opportunity for people going overboard or not doing</p> <p>6 it enough and putting in too many chickens, putting</p> <p>7 in too few chickens.</p> <p>8 And it takes a national survey to</p> <p>9 demonstrate that. And then if UEP is on the ball,</p> <p>10 they'll say, well, this portion of our industry has,</p> <p>11 obviously, gone too far.</p> <p>12 Q So this was written in mid-1995. Would it</p> <p>13 be fair to say that by the end of the 1990s UEP was</p> <p>14 prepared to take your advice to take a stronger</p> <p>15 stand on the question of space allowances?</p> <p>16 MR. TAKENOUCHI: Objection to form,</p> <p>17 misstates prior testimony.</p> <p>18 THE WITNESS: Well, the fact that they --</p> <p>19 the fact that they put together an advisory</p> <p>20 committee means they needed scientific evidence for</p> <p>21 their recommendation. That's the way they looked at</p> <p>22 it.</p> <p>23 There was also extreme pressure from the</p> <p>24 humane society that UEP do these -- make these</p> <p>25 decisions. We've never satisfied the humane society</p>	<p style="text-align: right;">92</p> <p>1 (Deposition Exhibit 6 was marked for</p> <p>2 identification by the court reporter</p> <p>3 and is attached hereto.)</p> <p>4 BY MR. OLSON:</p> <p>5 Q All right. Let me hand you what we marked</p> <p>6 Bell 6.</p> <p>7 So I'm really just focused on the first</p> <p>8 page. I'll identify this as a document --</p> <p>9 A Which one is the first page? It says June</p> <p>10 29th?</p> <p>11 Q No, the July 1, 1999.</p> <p>12 A That's the second one.</p> <p>13 Q It is Bates-stamped BELL-D-00026787 through</p> <p>14 -88.</p> <p>15 A Okay.</p> <p>16 Q Mr. Bell, can you identify this as a fax</p> <p>17 correspondence you received from Gene Gregory on</p> <p>18 July 1, 1999?</p> <p>19 A Yes, that's one that I received, yes.</p> <p>20 Q And it refers to an emergency meeting of</p> <p>21 UEP's marketing committee.</p> <p>22 Do you see that?</p> <p>23 A Yes, I see that.</p> <p>24 Q From time to time did you attend meetings</p> <p>25 of UEP's marketing committee?</p>
<p style="text-align: right;">91</p> <p>1 completely, but they are coming and at least talking</p> <p>2 to each other.</p> <p>3 BY MR. OLSON:</p> <p>4 Q But the cage space guidelines that UEP</p> <p>5 ultimately put into place --</p> <p>6 A Yes.</p> <p>7 Q -- was an example of UEP taking a stronger</p> <p>8 stand in this question of space allowances, fair?</p> <p>9 MR. TAKENOUCHI: Objection to form,</p> <p>10 misstates prior testimony.</p> <p>11 THE WITNESS: They -- they took the</p> <p>12 intermediate road and got the outside specialists to</p> <p>13 come in and study these issues, otherwise it</p> <p>14 wouldn't have been done. So I think UEP did a</p> <p>15 tremendous thing to pull the committee together, let</p> <p>16 them do their work, make their recommendations and</p> <p>17 follow them as much as they could.</p> <p>18 BY MR. OLSON:</p> <p>19 Q And that was an example of UEP taking a</p> <p>20 stronger stand on the question of cage space</p> <p>21 allowances?</p> <p>22 MR. TAKENOUCHI: Objection to form, asked</p> <p>23 and answered, misstates prior testimony.</p> <p>24 THE WITNESS: Yes, that was one of the</p> <p>25 issues, yes.</p>	<p style="text-align: right;">93</p> <p>1 A I can't recall.</p> <p>2 Q Mr. Gregory asks, in connection with that</p> <p>3 upcoming meeting, that you and Mr. Schrader prepare</p> <p>4 something for UEP.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q And he describes it as a 12-month supply</p> <p>8 plan to meet the market needs that provides a</p> <p>9 reasonable return on investment.</p> <p>10 Do you see that?</p> <p>11 A Yes, uh-huh.</p> <p>12 Q And how did you understand that request?</p> <p>13 What was Mr. Gregory asking for, to your knowledge?</p> <p>14 MR. TAKENOUCHI: Objection; foundation.</p> <p>15 THE WITNESS: I have no recollection of</p> <p>16 sending a report of this type to Gene Gregory, or</p> <p>17 anyone else, unless there are components of it which</p> <p>18 might have come out of some of our flock's modeling.</p> <p>19 Our models tell us some of those answers, but I</p> <p>20 don't find in my files anywhere this particular</p> <p>21 response.</p> <p>22 (Deposition Exhibit 7 was marked for</p> <p>23 identification by the court reporter</p> <p>24 and is attached hereto.)</p> <p>25 BY MR. OLSON:</p>

24 (Pages 90 to 93)

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<p>1 Q All right. Well, let me hand you what we 2 marked Bell 7. 3 A Okay. 4 That's from me. 5 Q And you see it is dated the next day? 6 A That's a pretty good response, isn't it? 7 Q It's fast work. 8 So let me identify this for the record as 9 Bates stamp BELL007698 through -7709. 10 A These are right out of my regular 11 newsletter. 12 Q Okay. Well, first, can you just identify 13 this document as one that you sent to -- 14 A Yes. 15 Q -- Mr. Gregory on July 2nd, 1999, right? 16 A Yes. 17 Q And at the beginning you have some tables, 18 and those are the ones you're saying are right out 19 of your newsletter? 20 A Yes. 21 Q And if you keep paging through and get 22 through -- 23 A The last page? 24 Q -- the second-to-the-last page -- 25 A Right.</p>	<p>1 some profits, right? 2 A That's what it says, yeah. 3 Q Okay. If you look at the opening sentences 4 do you see where you say, "Correction in the size of 5 the nation's layer flock can be obtained by one of 6 several ways"? 7 A Yes. 8 Q And then under that you give four different 9 ways that the egg industry can correct the size of 10 its flock, right? 11 A I have to read that. 12 Q Please do. Let me know when you're done. 13 A Yeah, I read the four of them, yes. 14 Q So you're giving four ways of correcting 15 the size of the nation's -- four ideas? 16 A Right. 17 Q And what's going on here is the industry is 18 facing extremely low egg prices -- 19 A I assume so. 20 Q Well, in fact, you say that, right? 21 A Okay. I said it, that's fine. 22 Q "Extremely low egg prices," so your idea is 23 to change supply to correct that problem, right? 24 A Yes. 25 Q Just looking at number 2, it says, "Extra</p>
95	97
<p>1 Q -- it is titled, "Estimated Break-even 2 Beginning Hen Inventory for 1999" -- 3 A Yes. 4 Q -- "to 2000 for Break-even or Better 5 Situation." 6 Do you see that? 7 A Yes. 8 Q Have you reviewed this page? 9 A No, I haven't read it, but it's, obviously, 10 an editorial add-on to the statistics pages. 11 Q Okay. 12 A So he asked us for the statistics and the 13 plan, and I sent him what was immediately available, 14 and in one day that is pretty fast. And the rest of 15 it I sat down at probably 3:00 in the morning and 16 typed out my editorial about that. 17 Q Okay. 18 A And I haven't read it in years, so I don't 19 know -- 20 Q All right. Let's look at that page. 21 A Okay. Go ahead. 22 Q You're talking about how to achieve a 23 break-even or better situation? 24 A Uh-huh. 25 Q So that means either break even or make</p>	<p>1 birds must be removed from the nation's flock 2 permanently." 3 A Yes. 4 Q What were you referring to there? 5 A Surplus birds, over demand. 6 Q Do what with surplus birds? 7 A Get rid of them. 8 Q How do you do them? 9 A Kill them. 10 Q Mr. Bell, do you find any irony in the fact 11 that while you were a member of the Scientific 12 Advisory Committee you were recommending just 13 disposing of hens? 14 MR. TAKENOUCHI: Objection to form, 15 speculation. 16 THE WITNESS: No, I have never been able to 17 separate my brain into 20 percent and 80 percent, so 18 I'm me. And you get the whole thing. I'm either on 19 the committee or my day-by-day life. Since I'm paid 20 for two days of my time, I think I have 20 other 21 days that I can do whatever I want and think 22 whatever I want, write whatever I want, communicate. 23 Okay? So, no, I don't -- I think this is totally 24 within my realm. 25 BY MR. OLSON:</p>

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<p>1 Q Number 4 refers to an industry-wide policy</p> <p>2 of a minimum floor space allowance that would result</p> <p>3 in a more ideal national flock size?</p> <p>4 A Right.</p> <p>5 Q And that was a suggestion that you were</p> <p>6 making at this time for UEP?</p> <p>7 A Yeah.</p> <p>8 Q And, in fact, UEP ended up adopting that?</p> <p>9 A No. The 48 inches at that time was what 15</p> <p>10 to 20 percent of the birds were kept, at less than</p> <p>11 48 inches.</p> <p>12 So I suggested here that if 48 were adopted</p> <p>13 as the minimum space allowance, but you know what</p> <p>14 happened is it became 67 eventually.</p> <p>15 Q It became a higher number?</p> <p>16 A Yeah.</p> <p>17 Q Right.</p> <p>18 A And I've recommended early stages 72. 72</p> <p>19 square inches -- early stages of a recommendation,</p> <p>20 but those recommendations change.</p> <p>21 Q But putting the specific numbers aside, the</p> <p>22 gist of the recommendation here was to adopt a</p> <p>23 minimum floor space allowance to help the</p> <p>24 profitability of the industry?</p> <p>25 A Of course, yes.</p>	<p>1 major issue, was that we have too many chickens. So</p> <p>2 that's always going to be a question, that's always</p> <p>3 going to be a target.</p> <p>4 Q And in this one, again, you suggest that</p> <p>5 molting should be included as part of a national</p> <p>6 program, because that results in a lower level of</p> <p>7 egg production, right?</p> <p>8 A Yes, of course. Yes.</p> <p>9 Q Now, you talked about UEP making efforts to</p> <p>10 persuade its members --</p> <p>11 A Uh-huh.</p> <p>12 Q -- and identified the newsletters</p> <p>13 Mr. Gregory edited?</p> <p>14 A Uh-huh.</p> <p>15 Q Beyond the newsletters, to your knowledge,</p> <p>16 what other types of efforts did UEP make to persuade</p> <p>17 its members to manage egg supply?</p> <p>18 A Well, all of their programs are voluntary,</p> <p>19 so I'm not just sure where voluntary comes into</p> <p>20 persuasion.</p> <p>21 You know, whether you reduce your bird</p> <p>22 numbers, that was a voluntary decision on each</p> <p>23 person's part.</p> <p>24 Q Were you ever at UEP meetings where members</p> <p>25 were asked to sign commitment forms about following</p>
99	101
<p>1 Q And the suggestion, as it's laid out here,</p> <p>2 doesn't relate to animal welfare, right?</p> <p>3 A I wouldn't say that.</p> <p>4 Q Well, here there is no -- it's not being</p> <p>5 suggested --</p> <p>6 A The word isn't used in there, not being</p> <p>7 used in the text.</p> <p>8 Q The outcome of this suggestion is an</p> <p>9 economic one?</p> <p>10 A That's what causes the suggestion, is that</p> <p>11 the -- my experience with cage density shows that</p> <p>12 that's an extreme that we shouldn't recommend.</p> <p>13 Q Now, if you turn to the next page, this one</p> <p>14 is entitled, "A Twelve Month Supply Plan to Meet the</p> <p>15 Market Needs that Provides a Reasonable Return on</p> <p>16 Investment."</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q And that's specifically what Mr. Gregory</p> <p>20 asked you to prepare, correct?</p> <p>21 A That's part of the request, yes.</p> <p>22 Q Do you recall other times that Mr. Gregory,</p> <p>23 or others in UEP, requested you propose plans for</p> <p>24 managing egg output?</p> <p>25 A I would say frequently, because that was a</p>	<p>1 programs, to your knowledge, to your recollection?</p> <p>2 A I don't recall it personally. Of course,</p> <p>3 the progress of having people participate was</p> <p>4 reported in their newsletters, that we now have</p> <p>5 50 percent, we now have 70 percent, we now have</p> <p>6 90 percent. And those -- that's all anybody really</p> <p>7 needs to know.</p> <p>8 Q Why do you say that?</p> <p>9 A Because the rest of it is confidential</p> <p>10 company information. I don't want you to know that</p> <p>11 I'm participating or not participating.</p> <p>12 Q By name?</p> <p>13 A By name.</p> <p>14 Q But it's helpful to know that others are</p> <p>15 participating?</p> <p>16 A And that's where the 70 percent comes in,</p> <p>17 the 80 percent comes in, yeah.</p> <p>18 Q And why is it helpful for an individual</p> <p>19 producer to know that 70 percent or 80 percent of</p> <p>20 others are participating?</p> <p>21 MR. TAKENOUCHI: Objection; foundation,</p> <p>22 calls for speculation.</p> <p>23 THE WITNESS: You said that earlier. You</p> <p>24 want to know you're in step. You want to know this</p> <p>25 has a good chance of working. It starts out in</p>

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<p>1 somebody's mind, and they put it down on paper and</p> <p>2 they have a committee and eventually you get a --</p> <p>3 what do you call it? --</p> <p>4 BY MR. OLSON:</p> <p>5 Q Program?</p> <p>6 A No.</p> <p>7 Q Proposal?</p> <p>8 A Where everybody votes -- referendum.</p> <p>9 You eventually have a referendum and you</p> <p>10 may do a national referendum on some law, and laws</p> <p>11 have been thrown out added to a national referendum.</p> <p>12 But you don't want to put yourself out</p> <p>13 there without having some idea what the industry is</p> <p>14 doing as a whole. And I think that kind of a</p> <p>15 progress that we now have 50, we now have 70, that's</p> <p>16 enough to encourage people to say, well, I guess I</p> <p>17 should get on board too.</p> <p>18 Q Now, Mr. Gregory, you've worked --</p> <p>19 A I'm not Mr. Gregory.</p> <p>20 Q I apologize.</p> <p>21 Mr. Bell, you've worked in the egg industry</p> <p>22 for over 45 years?</p> <p>23 A Yes.</p> <p>24 Q And you've been affiliated with a variety</p> <p>25 of organization that do work for the egg industry?</p>	<p>1 that their barn burned down and they need some</p> <p>2 values for their chickens, they get a hold of me,</p> <p>3 because we've developed computer models to calculate</p> <p>4 these things. So I'm not the only person out there</p> <p>5 giving advice, as you know.</p> <p>6 (Deposition Exhibit 8 was marked for</p> <p>7 identification by the court reporter</p> <p>8 and is attached hereto.)</p> <p>9 BY MR. OLSON:</p> <p>10 Q Let me hand you what's been marked Bell</p> <p>11 8 -- actually, could you put that down for a moment.</p> <p>12 A Okay.</p> <p>13 Q Going back to Bell 7, these ideas that you</p> <p>14 gave to Mr. Gregory --</p> <p>15 A Okay.</p> <p>16 Q -- do you recall specifically the ideas</p> <p>17 about different ways to correct the size of the</p> <p>18 nation's layer flock? Do you recall discussing</p> <p>19 these with Mr. Gregory or others at UEP after you</p> <p>20 provided --</p> <p>21 A After I gave him this?</p> <p>22 Q Right.</p> <p>23 A Probably no.</p> <p>24 Q I'm just asking if you recall.</p> <p>25 A Well, I don't recall, no.</p>
103	105
<p>1 A Yes.</p> <p>2 MR. TAKENOUCHI: Objection to form.</p> <p>3 BY MR. OLSON:</p> <p>4 Q And you've worked for and done consulting</p> <p>5 work for a number of individual egg producers?</p> <p>6 A Yes.</p> <p>7 Q What number would you put that at?</p> <p>8 A Well, it started out with a county, 400</p> <p>9 producers with all of them. You go statewide with</p> <p>10 2,000 producers, I may work with 25 percent of them,</p> <p>11 because they are too far away from my office. Okay?</p> <p>12 When I began as a statewide specialist,</p> <p>13 then I started to branch out nationally, and now you</p> <p>14 start to do newsletters to everybody, no -- getting</p> <p>15 stuff out intentionally.</p> <p>16 And then when I get to do international,</p> <p>17 that involves organizations in other countries,</p> <p>18 so --</p> <p>19 Q Now, in addition to this national work --</p> <p>20 A Yes.</p> <p>21 Q -- did you continue to do some consulting</p> <p>22 for individual egg producers?</p> <p>23 A Yes.</p> <p>24 Q You've done that your whole career?</p> <p>25 A Whenever we get a request from somebody</p>	<p>1 Q All right. Now I've handed you what we've</p> <p>2 marked Gregory 8 -- Bell 8. Sorry.</p> <p>3 A Which one are we looking at? Molting?</p> <p>4 Q This is a UEP publication. Let me read the</p> <p>5 Bates number into the record.</p> <p>6 It is UE0064456 through -64459. It was</p> <p>7 Gregory Exhibit 11. That's why I have Gregory on</p> <p>8 the brain.</p> <p>9 All right. Let me just first ask if you</p> <p>10 can identify this as United Voices --</p> <p>11 A That's their regular every two weeks, I</p> <p>12 believe it is.</p> <p>13 Q And you received these generally, correct?</p> <p>14 A I keep about half of them, throw half of</p> <p>15 them away.</p> <p>16 Q All right. So if you look at beginning at</p> <p>17 the bottom right of the second page there is a part</p> <p>18 that said, "Roller Coaster Egg Price Quotes," and</p> <p>19 maybe if you could just skim that --</p> <p>20 A Okay.</p> <p>21 Q -- and skim page 3.</p> <p>22 A Who wrote it?</p> <p>23 Q Well, I believe this is Mr. Gregory.</p> <p>24 A Him. Okay. Boy, that's a terrible --</p> <p>25 there it is over there, market outlook.</p>

27 (Pages 102 to 105)

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<p>1 Do I have to read the whole thing?</p> <p>2 Q If you just skim it.</p> <p>3 A Okay. Go ahead.</p> <p>4 Q Just the question is can you see that -- if</p> <p>5 you look at the top right of page 3, Mr. Gregory</p> <p>6 says, "You will also be asked if you would</p> <p>7 participate in a supply adjustment program."</p> <p>8 Do you see where it says that?</p> <p>9 A Yes, I see that.</p> <p>10 Q And then underneath do you see where</p> <p>11 Mr. Gregory has reproduced the suggestions you made</p> <p>12 about the corrections in the nation's flock size?</p> <p>13 A Yes.</p> <p>14 Q And it has those four including the</p> <p>15 industry-wide policy of a --</p> <p>16 A Is this shortly after those other letters?</p> <p>17 Q It is the next month.</p> <p>18 A The next month. Okay. Go ahead.</p> <p>19 Q And it includes this one about the minimum</p> <p>20 floor space allowance.</p> <p>21 A Uh-huh.</p> <p>22 Q Now, based on your knowledge of the</p> <p>23 industry, do you have an understanding of who would</p> <p>24 have received this type of document?</p> <p>25 MR. TAKENOUCHI: Objection; foundation.</p>	<p>1 (Deposition Exhibit 9 was marked for</p> <p>2 identification by the court reporter</p> <p>3 and is attached hereto.)</p> <p>4 BY MR. OLSON:</p> <p>5 Q Let me hand you what we've marked Bell 9.</p> <p>6 Why don't you briefly review this, please.</p> <p>7 It is Bates-stamped BELL004041 through -42.</p> <p>8 Why don't we change tape now.</p> <p>9 THE VIDEOGRAPHER: Okay. Off the record.</p> <p>10 We are off the record. The time is 12:11 p.m. on</p> <p>11 August 20th, 2013. This is the end of video number</p> <p>12 1 of the continuing deposition of Mr. Donald Bell.</p> <p>13 (Recess.)</p> <p>14 THE VIDEOGRAPHER: We are on the record.</p> <p>15 The time is 12:16 p.m. on August 20th, 2013. This</p> <p>16 is the beginning of video number 2 of the deposition</p> <p>17 of Mr. Donald Bell.</p> <p>18 BY MR. OLSON:</p> <p>19 Q Mr. Bell, can you identify Exhibit 9 as an</p> <p>20 e-mail you wrote to what you were calling the Animal</p> <p>21 Welfare Committee on December 22nd, 1999?</p> <p>22 A Yes, I do.</p> <p>23 Q This is what we called today the Scientific</p> <p>24 Advisory Committee?</p> <p>25 A Yes.</p>
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<p>1 THE WITNESS: Are those four points the</p> <p>2 same exact points that I had in my letter?</p> <p>3 BY MR. OLSON:</p> <p>4 Q Right.</p> <p>5 A Okay. Part of my editorial?</p> <p>6 Q Right.</p> <p>7 A Okay.</p> <p>8 Q So this is just a background question. I</p> <p>9 mean, I take it you're aware that this United Voices</p> <p>10 was sent to UEP members and even others?</p> <p>11 A Well, it's sent to their entire membership</p> <p>12 list, to my knowledge, and I don't remember this</p> <p>13 being a response to my earlier letter. I don't read</p> <p>14 some of these things --</p> <p>15 Q So you don't recall seeing this at the</p> <p>16 time?</p> <p>17 A I don't recall, but it is right out of</p> <p>18 here, so it's okay.</p> <p>19 Q Just my question is: Does this refresh</p> <p>20 your recollection about any follow-up discussions</p> <p>21 you had with, really, anyone about these ideas?</p> <p>22 A This is the first I've known about it.</p> <p>23 Q Okay. Put that aside.</p> <p>24 A I'm sure it's been the subject of</p> <p>25 discussion, but I have no personal knowledge.</p>	<p>1 MR. TAKENOUCHI: Objection; form.</p> <p>2 BY MR. OLSON:</p> <p>3 Q And what you discuss in this e-mail is the</p> <p>4 issue of cage space and how much cage space the</p> <p>5 committee should recommend generally, correct?</p> <p>6 A Yes.</p> <p>7 Q And you begin that discussion by saying,</p> <p>8 "Even though the subject is mainly one on selecting</p> <p>9 cage density based on current economic parameters,"</p> <p>10 and you go on.</p> <p>11 What were you referring to when you say,</p> <p>12 "based on current economic parameters"?</p> <p>13 A I think we probably were looking at</p> <p>14 averages, which vary from year to year, as opposed</p> <p>15 to a set of recommendations which would be over a</p> <p>16 long time period. So I think that's probably the</p> <p>17 emphasis there.</p> <p>18 Q But what economic parameters was the</p> <p>19 committee considering in this regard?</p> <p>20 A That -- the committee, at that time, in</p> <p>21 early sitting of the committee, would probably have</p> <p>22 placed most of its emphasis on egg production and</p> <p>23 mortality, and not until they were pressured into</p> <p>24 welfare-type issues much later by the humane</p> <p>25 society.</p>

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<p>1 So I would assume that "current economic 2 parameters" means the cost of production and the 3 price of eggs. 4 Q And one of the points you make here is that 5 in putting together the guidelines, the committee 6 needs to recognize that the egg producer is in 7 business to make a living, right? 8 A Yes. 9 Q And the Scientific Advisory Committee needs 10 to think about investments, cost, performance and 11 profits, and consider all those things in the 12 program that was going to be adopted, right? 13 A I'm not finding your keywords. 14 Q Oh, sorry. If you look at point 2. 15 A Point 2 down here. Okay. Yes, I see it. 16 Okay. 17 Q Point 2 and 3, what you're saying is when 18 the committee makes its recommendations, it needs to 19 consider that the egg producer is in business to 20 make a living and it needs to consider investments, 21 cost, performance and profits, right? 22 A I guess there is a word -- "consider" or 23 "consideration" might need to be explained, but 24 that's what I wrote, so that's what they got. 25 "Consider" means one of many things that you have to</p>	<p>1 are you in the third one? I can't see it in the 2 third paragraph. 3 Q Do you see the paragraph that says, "I am 4 primarily concerned"? 5 A Yes, okay. 6 Q The third sentence there. 7 A Oh, third sentence, you said "third 8 paragraph." 9 Q It is the third sentence in the third 10 paragraph. 11 A "I am also concerned." Okay. I was 12 reading down here, number 3. 13 Q Do you see that? 14 A That's saying that if you allowed an acre 15 of land for each chicken, that you wouldn't persuade 16 anybody to make any changes, because you've given 17 them way more than is required to satisfy the 18 welfare. 19 Q And, in fact, has this document refreshed 20 your recollection that at this time some on the 21 committee were thinking that 72 inches was the right 22 number? 23 A Yes. 72 inches is sort of a magic number. 24 Because of the size of cages that were present at 25 the time, you divide the total space of the cage by</p>
111	113
<p>1 consider. 2 Q Okay. But these are things that needed to 3 be considered -- 4 A Exactly. 5 Q -- in your view? 6 And the committee did consider those 7 things? 8 MR. TAKENOUCHI: Objection; foundation. 9 THE WITNESS: Among the welfare issues that 10 we're primarily concerned with. The economics would 11 be more important to me, probably, because, as I 12 said, as a main reason people change is economic 13 reasons. That's why they change anything, and we 14 are talking about change here. 15 BY MR. OLSON: 16 Q And one of the points you make here in that 17 regard is you thought an unrealistically high 18 recommendation would fail to persuade anyone, right? 19 A Where did you read that now? 20 Q The third full paragraph. 21 A The third full paragraph. 22 Q Do you see where you say, "I'm also 23 concerned that an unrealistically high 24 recommendation would fail to persuade anyone"? 25 A You're in the second part of that? Where</p>	<p>1 1, 2, 3 or 4, or some other number, and 72 comes out 2 a good, usable number. 3 Q And you make the point on the second page 4 of this that you were against 72 square inches as a 5 number because it could not be economically 6 justified, right? 7 A Yes. And it also goes back to the question 8 of a standard for everybody, 72 inches for you might 9 be the right number, for me it is the wrong number. 10 So we have methods of analyzing the issue for you 11 and for me separately. 12 And if we want to use something for the 13 entire industry, well, then, we'll develop a set of 14 parameters, and we'll say that that's too much or 15 that's too little. 16 Q And you thought in coming up with the 17 parameters, the committee had to consider practical 18 issues and be realistic, right? 19 A Absolutely, yes. 20 Q And not recommend practices that weren't 21 economically justified? 22 A Especially in the next paragraph where it 23 says such as Economic Union of Europe to just copy 24 what they do verbatim and thinking that's going to 25 apply to the United States. That's a very important</p>

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<p style="text-align: right;">114</p> <p>1 statement.</p> <p>2 And that's what we've done, we've adopted</p> <p>3 some of their technology and management from Europe</p> <p>4 word for word, and it's not for the United States.</p> <p>5 Q Okay. All right. I think that's all on</p> <p>6 this document. Do you want to take a break now?</p> <p>7 MR. GODLSTEIN: Yes, let's take a break.</p> <p>8 THE VIDEOGRAPHER: We are off the record.</p> <p>9 The time is 12:23 p.m.</p> <p>10 (Recess.)</p> <p>11 THE VIDEOGRAPHER: We are back on the</p> <p>12 record. The time is 12:36 p.m.</p> <p>13 (Deposition Exhibit 10 was marked for</p> <p>14 identification by the court reporter</p> <p>15 and is attached hereto.)</p> <p>16 BY MR. OLSON:</p> <p>17 Q I've handed you what's been marked Bell</p> <p>18 Exhibit 10. It's Bates-stamped BELL004353 through</p> <p>19 -4354.</p> <p>20 And can you identify this as a document</p> <p>21 that you received from Jerry Faulkner of the United</p> <p>22 States Egg Marketers sometime prior to January 18th,</p> <p>23 2000?</p> <p>24 A Yes, it was -- it is.</p> <p>25 Q And it references you agreeing to come</p>	<p style="text-align: right;">116</p> <p>1 But I don't know if this has got the hard</p> <p>2 copy set of slides or anything like that.</p> <p>3 Q I don't think I have that.</p> <p>4 A Okay.</p> <p>5 Q And if you look at the next page where it</p> <p>6 says "Also, Don" -- do you see that?</p> <p>7 A Yes.</p> <p>8 Q -- "let me know how to adequately</p> <p>9 compensate you for your time and effort for this</p> <p>10 presentation."</p> <p>11 Do you recall how you were compensated?</p> <p>12 A I have no idea. At least expenses.</p> <p>13 Q Okay. You can put that aside.</p> <p>14 (Deposition Exhibit 11 was marked for</p> <p>15 identification by the court reporter</p> <p>16 and is attached hereto.)</p> <p>17 BY MR. OLSON:</p> <p>18 Q Now let me hand you what's been marked Bell</p> <p>19 11.</p> <p>20 A Thank you. Okay.</p> <p>21 Q This is a document entitled,</p> <p>22 "Recommendations for UEP Animal Welfare Guidelines,"</p> <p>23 dated September 2000, Bates-stamped UE0208684</p> <p>24 through -208703.</p> <p>25 And can you generally identify this</p>
<p style="text-align: right;">115</p> <p>1 present a report to the USEM membership on January</p> <p>2 18th, 2000, correct?</p> <p>3 A Yes.</p> <p>4 Q And does that refresh your recollection</p> <p>5 that you were invited to --</p> <p>6 A Yes.</p> <p>7 Q -- present to USEM?</p> <p>8 Okay. Just briefly, at the bottom of page</p> <p>9 1, do you see where it says, "Following your</p> <p>10 presentation, the membership will take up the</p> <p>11 subject of reducing each member's total hen numbers</p> <p>12 during this year through slaughter, rendering, et</p> <p>13 cetera, as well as cutting chick placements"?</p> <p>14 A Yes.</p> <p>15 Q It says, "Your presentation will 'set the</p> <p>16 stage' for consideration of these flock reduction</p> <p>17 programs."</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Do you recall this meetings?</p> <p>21 A Vaguely. I think I mentioned it earlier</p> <p>22 that I thought I had been to one. And when I saw</p> <p>23 Faulkner's name, then I recognized it. I was,</p> <p>24 frankly, thinking of one of his successor, and</p> <p>25 that's why I couldn't relate it.</p>	<p style="text-align: right;">117</p> <p>1 document for us, Mr. Bell?</p> <p>2 A Well, it appears to be a set of guidelines</p> <p>3 that the advisory committee gave to UEP, but I don't</p> <p>4 know whether it was a final copy of this particular</p> <p>5 document or whether it was -- the fact that it says</p> <p>6 "confidential" at the bottom makes me think it was</p> <p>7 an in-progress report.</p> <p>8 Q Well, I can tell you that it was</p> <p>9 represented to us by UEP counsel and Gene Gregory</p> <p>10 that this is the final copy.</p> <p>11 A This is the final?</p> <p>12 Q If that's helpful.</p> <p>13 A This is an old copy, of course. The</p> <p>14 current one is around 210 -- 2010, or something.</p> <p>15 Q Okay. Let's just look at a couple -- but,</p> <p>16 in any case, this document, to the extent it was the</p> <p>17 final one, would have been the initial set of</p> <p>18 recommendations?</p> <p>19 A It follows our first meeting in 1999,</p> <p>20 right.</p> <p>21 Q Right.</p> <p>22 A So it would be -- I'm sure this is the</p> <p>23 first document, quote unquote.</p> <p>24 Q That that was the official recommendations</p> <p>25 of the Scientific Advisory Committee?</p>

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<p style="text-align: right;">118</p> <p>1 A But I don't know how far this goes. Has</p> <p>2 UEP accepted this at this point?</p> <p>3 Q Well, I can't answer that one for you.</p> <p>4 A Okay.</p> <p>5 Q Let's just page through it a little bit.</p> <p>6 If you go a few pages in, there is a headline that</p> <p>7 says, "Beak Trimming Laying Strains of Chickens"?</p> <p>8 A Yes.</p> <p>9 Q Were you involved in forming</p> <p>10 recommendations about beak trimming?</p> <p>11 A In this particular -- wait. I probably</p> <p>12 commented on it, because we've done a lot of</p> <p>13 research on it in the committee, but I believe this</p> <p>14 was written by Scotti Hester, one of the members, I</p> <p>15 believe this is, and she's fantastic. And I don't</p> <p>16 think there is any aspect that I would have</p> <p>17 disagreed with.</p> <p>18 Q All right. So if you look at where it says</p> <p>19 "Beak Trimming Recommendations for UEP Guidelines,"</p> <p>20 probably the next page.</p> <p>21 A Oh, next page? Go ahead.</p> <p>22 Q The first recommendation there, do you see</p> <p>23 it? "Where possible, producers should select</p> <p>24 genetic stocks that require little or no beak</p> <p>25 trimming"?</p>	<p style="text-align: right;">120</p> <p>1 Allowances, and Environment."</p> <p>2 A On the page -- there we go.</p> <p>3 Q Do you see that heading?</p> <p>4 A Got it.</p> <p>5 Q Now, I take it, Mr. Bell, that with regard</p> <p>6 to housing, cage space density wasn't the only issue</p> <p>7 the scientific committee thought was important?</p> <p>8 A I would hope not.</p> <p>9 Q The committee also thought feeder space was</p> <p>10 important, right?</p> <p>11 MR. TAKENOUCHI: Objection to form.</p> <p>12 THE WITNESS: I personally did, because I</p> <p>13 was -- I was one of the first ones to do work with</p> <p>14 feeder space, and we demonstrated up to 6 inches.</p> <p>15 But if you look at the final part of this thing, I'm</p> <p>16 not sure whether we wound up with 4 inches or we</p> <p>17 wound up with enough space for all the birds to eat</p> <p>18 at the same time.</p> <p>19 BY MR. OLSON:</p> <p>20 Q If you look -- go ahead and page towards</p> <p>21 the recommendations, "Housing Recommendations For</p> <p>22 Caged Hens for the UEP Guidelines"?</p> <p>23 A Where are we? Conclusion, or what?</p> <p>24 "Housing Recommendations" -- go ahead.</p> <p>25 Q If you look at point 4 --</p>
<p style="text-align: right;">119</p> <p>1 A That's the easy way out, yes.</p> <p>2 Q And that's the recommendation of the</p> <p>3 Scientific Advisory Committee, correct?</p> <p>4 MR. TAKENOUCHI: Objection to form.</p> <p>5 THE WITNESS: That would be the first</p> <p>6 recommendation. I don't --</p> <p>7 BY MR. OLSON:</p> <p>8 Q Their first recommendation?</p> <p>9 A Yes.</p> <p>10 Q And do you know if UEP adopted that</p> <p>11 recommendation --</p> <p>12 A Doesn't this represent the final copy, or</p> <p>13 not?</p> <p>14 Q Well, this is the Scientific Advisory</p> <p>15 Committee guidelines. I'm saying in the UEP</p> <p>16 producer guidelines, do you know if --</p> <p>17 A I don't think they would have changed that.</p> <p>18 That's not an argumentative thing.</p> <p>19 Q That was not a controversial</p> <p>20 recommendation?</p> <p>21 A It's like motherhood, you wouldn't complain</p> <p>22 about motherhood, would you?</p> <p>23 Q I certainly wouldn't.</p> <p>24 All right. If we look at the next heading,</p> <p>25 this is the one that says, "Housing, Space</p>	<p style="text-align: right;">121</p> <p>1 A Go ahead.</p> <p>2 Q What does point 4 indicate about the</p> <p>3 consensus of the Scientific Advisory Committee?</p> <p>4 A Well, it says 4 inches.</p> <p>5 Q Minimum 4 inches per bird?</p> <p>6 A Yes. Do you want me to continue or you've</p> <p>7 had enough answer?</p> <p>8 Q Let me try a couple questions.</p> <p>9 A Go ahead. You forget you're talking to an</p> <p>10 extension person.</p> <p>11 Q And who, on the committee, was principally</p> <p>12 responsible for this section, to your knowledge?</p> <p>13 A This was written, like I say, by Scotti</p> <p>14 Hester. If you go to the front of the page --</p> <p>15 Q The beak trimming?</p> <p>16 A Scotti Hester.</p> <p>17 Q That's a woman?</p> <p>18 A That's a lady.</p> <p>19 Q Okay. Did Dr. Hester also draft the</p> <p>20 housing --</p> <p>21 A We're on housing now?</p> <p>22 Q Yes.</p> <p>23 A Okay. Pardon me.</p> <p>24 Housing, if it involves a lot of cage</p> <p>25 density, it was probably done by Joy Mench, and I</p>

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<p>1 think she probably had a co-writer. It wasn't me, I</p> <p>2 think, even though -- let me see, did I -- I</p> <p>3 probably submit -- yeah, we were all asked to submit</p> <p>4 our thinking about each person's original draft.</p> <p>5 Q And then you all signed off on the final?</p> <p>6 A We all signed off on the final. I don't</p> <p>7 think we were antagonistic about anything at that</p> <p>8 point.</p> <p>9 Q And would it be fair to say that the</p> <p>10 consensus of the advisory committee is that feeder</p> <p>11 space was a critical element affecting welfare?</p> <p>12 MR. TAKENOUCHI: Objection; form, leading,</p> <p>13 foundation.</p> <p>14 THE WITNESS: The committee, I don't think,</p> <p>15 was as firm as I was. Remember, we had -- worldwide</p> <p>16 we had over 50 million chickens working on the</p> <p>17 feeder space part of that. And they bought and</p> <p>18 built all over the world. And up to that point, up</p> <p>19 to that point, 4 inches was kind of the exception.</p> <p>20 BY MR. OLSON:</p> <p>21 Q And if you look back at the prior page, the</p> <p>22 one that ends in -92?</p> <p>23 MR. GODLSTEIN: Go one page.</p> <p>24 THE WITNESS: Okay.</p> <p>25 MR. GODLSTEIN: Back.</p>	<p>1 abandoned. I went as far as 6.</p> <p>2 Q Now, did the UEP producer guidelines, to</p> <p>3 your knowledge, ever accept this recommendation that</p> <p>4 4 inches of feeder space must be provided to hens?</p> <p>5 A Well, unless this is -- this is not -- you</p> <p>6 say this is not the first document? You say it's a</p> <p>7 draft from the committee, right?</p> <p>8 Q This is the final --</p> <p>9 A Draft?</p> <p>10 Q Well, the final -- it's not a draft. It's</p> <p>11 the final initial guidelines.</p> <p>12 A It's not the publication?</p> <p>13 Q It is not the UEP publication. This is the</p> <p>14 Scientific Advisory Committee --</p> <p>15 A Scientific Advisory Committee, at this</p> <p>16 point, but I don't think the first published one to</p> <p>17 the general public used the word 4 inches. Okay?</p> <p>18 Q Are you talking about the UEP guidelines?</p> <p>19 A No, I'm talking about the UEP published</p> <p>20 guidelines in -- definitely in 2010 and 2008, and</p> <p>21 there's been about three or four versions of this</p> <p>22 thing.</p> <p>23 The very first one of these things that was</p> <p>24 publicly released to their members, to their</p> <p>25 members, I'm not sure whether it says 4 or enough</p>
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<p>1 THE WITNESS: The other way?</p> <p>2 MR. GODLSTEIN: Yes.</p> <p>3 THE WITNESS: Okay. Go ahead.</p> <p>4 BY MR. OLSON:</p> <p>5 Q All right. Do you see where it says</p> <p>6 towards the top, "The research on space allowances</p> <p>7 can be summarized as follows"?</p> <p>8 A Yes. Go ahead.</p> <p>9 Q And if you look at the last bullet there,</p> <p>10 second sentence says, "Feeder space is a critical</p> <p>11 element affecting" --</p> <p>12 A Yes.</p> <p>13 Q -- "affecting welfare," right?</p> <p>14 Was that the view of the committee?</p> <p>15 MR. TAKENOUCHI: Objection; foundation.</p> <p>16 THE WITNESS: I believed it was, but not to</p> <p>17 the point of the exact number.</p> <p>18 BY MR. OLSON:</p> <p>19 Q Well, if you look at the bottom of that</p> <p>20 bullet --</p> <p>21 A Yeah.</p> <p>22 Q -- doesn't it say 4 inches of feed- --</p> <p>23 A It does, but eventually not too much later</p> <p>24 this became enough so that all the chickens could</p> <p>25 eat at the same time, and the 4 inches was</p>	<p>1 for all the chickens.</p> <p>2 Q Fair enough.</p> <p>3 Now, feeder space is important, as I</p> <p>4 understand it, because within hens there is a</p> <p>5 pecking order, right?</p> <p>6 A Go ahead.</p> <p>7 Q And there's some --</p> <p>8 A Demonstrate your knowledge.</p> <p>9 Q Let me try and tell me if I'm right.</p> <p>10 There are some that are socially dominant?</p> <p>11 A Yes.</p> <p>12 Q And there are some that are socially --</p> <p>13 A Recessive.</p> <p>14 Q -- recessive?</p> <p>15 And the concern is that the socially</p> <p>16 dominant ones won't let the socially recessive ones</p> <p>17 eat enough unless there is enough feeder space for</p> <p>18 all the hens?</p> <p>19 MR. TAKENOUCHI: Objection to form.</p> <p>20 BY MR. OLSON:</p> <p>21 Q Is that a fair characterization?</p> <p>22 A That's fair. It is more complex than that,</p> <p>23 but go ahead.</p> <p>24 Q How would you describe it, the importance</p> <p>25 of feeder space?</p>

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<p>1 A First of all, you have dominant birds 2 picking over the food and taking out the -- mostly 3 the grain, which is like dessert, you know, they 4 prefer that. And that's where the carbohydrate -- 5 that's where the energy is. 6 So you are starting to imbalance the diet 7 by limiting the feeder space. 8 Pictures that we drew about the original 9 cage space issue is that maybe three birds would be 10 at the feed trough and one bird would have to stand 11 in the back. 12 And when you change the bird numbers, you 13 change about four things. You change the colony 14 size, you change the feeder space, you change the 15 amount of water -- watering per bird. 16 So to separate the feeder space from the 17 floor space, that's a difficult exercise, to 18 separate which is most important. All the eggs that 19 you lose are feeder space, all the eggs you lose are 20 floor space, it is very difficult. 21 We developed formulas in our research where 22 you could assign numbers to each element, because we 23 had all kinds of cases. You go out in the field and 24 the farmer doesn't have a clue. 25 Q Now, as far as the floor space aspect, the</p>	<p>1 the research has been in that range. 2 I personally have done research beyond that 3 range, and I've -- I gave her copies showing 4 continuing decrease in production beyond 72, and 5 certainly beyond 67. 6 Q Continuing decrease? 7 A Decrease in production -- pardon me, 8 increase in production -- 9 Q Increase in production? 10 A -- as you went to the higher numbers. 11 You picked me up on that one quick. 12 Q Right. So above -- your research indicated 13 that above 72, the hens keep producing more. 14 Did your research look at the mortality 15 issue? 16 A Oh, yeah, always does. 17 Q Above 72? 18 A Always does that. 19 Q And the mortality rates get better above 20 72 -- 21 A They get better, go down with increasing 22 space. 23 Q Yes. And if you look at the fourth bullet 24 here, the committee says, "Measurements of white 25 leghorn hens show that they require about 65 to 83</p>
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<p>1 first bullet here indicates that the conclusion of 2 the research, and it says, "Numerous studies" -- 3 A Go ahead. 4 Q -- "have shown that decreasing space 5 allowances in cages to below approximately 72 square 6 inches per hen significantly reduces henhouse egg 7 production and increases mortality," right? 8 MR. TAKENOUCHI: Objection; misstates the 9 document. 10 THE WITNESS: Yes. That's an open-ended 11 amount of space. 12 BY MR. OLSON: 13 Q 72 square inches? 14 A 72 is one, but then we got below that. You 15 are talking about the -- where are we at here? The 16 different study, "numerous studies." Okay. There 17 was a range of about 67 to 86. 18 Okay. So 67, 80, 86, you're going to get a 19 curve of the issue here. 20 70 -- now, what Joy Mench says is that once 21 you get to 72, you're just about done. Well, the 22 problem -- just about done all the effective. You 23 could add a square foot to that and you wouldn't add 24 any more eggs. 25 And why does she say that? Because most of</p>	<p>1 square inches to perform even the most basic 2 behaviors, standing comfortably and resting, and 3 more room is required to perform other" -- 4 A Yeah. 5 Q Was that consistent with your research too? 6 A Well, we didn't look at the wing flapping, 7 you know, we didn't look at behavioral things. We 8 did practical research that the farmer could 9 duplicate. 10 And he can count eggs and he can weigh the 11 eggs and he can weigh the chickens and he can look 12 at the mortality, but he can't sit out there with a 13 TV camera determining how many flaps per hour the 14 chickens wave their wings. That's got to be done in 15 a laboratory. 16 Q All right. One more quick question on this 17 document. If you turn to the molting section -- 18 A Got it. 19 Q -- and I'm looking at the recommendation 20 part, the document ends in -98. It says, "Molting 21 Recommendations for UEP Guidelines." 22 A Yeah. 23 Q Basically the committee concluded that 24 there were animal welfare concerns with molting 25 through forced starvation, right?</p>

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<p>1 A Feed withdrawal.</p> <p>2 Q And that that feed withdrawal raised</p> <p>3 genuine animal welfare concerns; is that fair?</p> <p>4 MR. TAKENOUCHI: Object to the form.</p> <p>5 THE WITNESS: Say that again.</p> <p>6 BY MR. OLSON:</p> <p>7 Q The committee concluded that the feed</p> <p>8 withdrawal raised animal welfare concerns?</p> <p>9 A Yes.</p> <p>10 Q And encouraged producers and researchers to</p> <p>11 develop alternatives?</p> <p>12 A Yes.</p> <p>13 Q And recommended that in the meantime the</p> <p>14 shortest period of feed withdrawal period should be</p> <p>15 used?</p> <p>16 A Yes.</p> <p>17 Q And did you have an understanding at that</p> <p>18 time of what the shortest period of feed withdrawal</p> <p>19 possible was?</p> <p>20 A Yes.</p> <p>21 Q And what was that?</p> <p>22 A Oh, you don't want me to do that, do you?</p> <p>23 You said yes or no. That's okay. I'm kidding you.</p> <p>24 We experimented with as short as four or</p> <p>25 five days and as long as 16 days.</p>	<p>1 days?</p> <p>2 A We've done away with that. We don't take</p> <p>3 feed away at all today.</p> <p>4 Q I'm talking about this time.</p> <p>5 A Back then, I don't think anybody would have</p> <p>6 gone that short. It was experimental.</p> <p>7 Q Wasn't McDonald's insisting --</p> <p>8 A I don't know about McDonald's. I've gotten</p> <p>9 their letters through the years. They probably</p> <p>10 didn't want us to take the feed away at all. I</p> <p>11 don't know.</p> <p>12 (Deposition Exhibit 12 was marked for</p> <p>13 identification by the court reporter</p> <p>14 and is attached hereto.)</p> <p>15 BY MR. OLSON:</p> <p>16 Q Let me hand you what we've marked</p> <p>17 Exhibit 12.</p> <p>18 A What do we have here?</p> <p>19 MR. GODLSTEIN: Do you have one more?</p> <p>20 THE WITNESS: I've seen this before.</p> <p>21 BY MR. OLSON:</p> <p>22 Q This is Bates-stamped UE0840403 through</p> <p>23 -404.</p> <p>24 And can you identify it as an e-mail</p> <p>25 Mr. Gregory wrote to you on December 12, 2000?</p>
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<p>1 When I first heard anybody was using ten</p> <p>2 days, I was amazed, I didn't believe it. But as we</p> <p>3 did maybe 30 or 40 experiments a year, it sort of</p> <p>4 appeared that you could improve results by going up</p> <p>5 to ten days, maybe in some cases 12 days.</p> <p>6 So we put a set of conditions. We said</p> <p>7 that you could only have so much body weight loss,</p> <p>8 so that means they had to weigh the chickens every</p> <p>9 day. You could only have so much mortality, so you</p> <p>10 count the dead birds until you got to a certain</p> <p>11 level, or you say definitely don't go more than 14</p> <p>12 or 16 days.</p> <p>13 Q But my question is: Was there an</p> <p>14 understanding at the time of what the shortest</p> <p>15 period --</p> <p>16 A Well, that's what I told you. I said --</p> <p>17 Q Four or five days?</p> <p>18 A -- we started with four or five days.</p> <p>19 You've got to get the birds out of production and</p> <p>20 into a rest. And the shortest you can do is put</p> <p>21 them right back on a laying mesh and you get this</p> <p>22 flush of production right at the beginning, but they</p> <p>23 poop out towards the end.</p> <p>24 Q So it's possible to induce hens into a molt</p> <p>25 by depriving them of food for only four or five</p>	<p>1 A Yes.</p> <p>2 Q And it's referring to the terms of your</p> <p>3 contract with UEP?</p> <p>4 A That's correct.</p> <p>5 Q And it indicates you had proposed to be</p> <p>6 paid about \$18,000 a year, and Mr. Gregory had --</p> <p>7 offered to compromise at \$15,000, correct?</p> <p>8 A Let me see. Where does it say -- there it</p> <p>9 is -- you have proposed 18-. Could we reach a</p> <p>10 compromise at 15- -- that's what we wound up doing,</p> <p>11 yeah. I think it was 1,250 a month. I think that's</p> <p>12 15-, isn't it?</p> <p>13 Q Right. You can put that away.</p> <p>14 (Deposition Exhibit 13 was marked for</p> <p>15 identification by the court reporter</p> <p>16 and is attached hereto.)</p> <p>17 BY MR. OLSON:</p> <p>18 Q Let me hand you what's marked Bell</p> <p>19 Exhibit 13 very briefly.</p> <p>20 This is Bates-stamped UE0790540 through</p> <p>21 -542.</p> <p>22 I'll just ask if you can identify this as</p> <p>23 the executed financial consulting agreement between</p> <p>24 you and UEP?</p> <p>25 A Yes, it is.</p>

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<p>1 Q And it indicates that you would be paid at 2 a rate of -- 3 A Yes. 4 Q -- \$1,250 per month? 5 A I'm not supposed to interrupt you. I'm 6 sorry. 7 Yes. 8 Q And also that if you are requested to 9 attend UEP committee and board of director meetings, 10 you would be reimbursed at a rate of 500 per day, 11 plus travel and lodging expenses. 12 Do you see that? 13 A Yes. 14 Q Is that consistent with how you were paid 15 over the years? 16 A I don't recall the 500-per-day part of it. 17 The travel and lodging, obviously they paid for it. 18 The 500 a day is essentially, I guess, of what I'm 19 being paid up here for a month of 2 1/2 days a month 20 or something like that. But it's just to take care 21 of the extra, the extra costs, my time. I've 22 already given them the 1,250's worth, and going to 23 this special meeting, they have to pay for that too. 24 Q Yeah, I just wanted you to verify this is 25 the terms of the --</p>	<p>1 right? 2 A Yes. 3 Q And that's what was being proposed by the 4 advisory committee at this time? 5 MR. TAKENOUCHI: Objection; form, misstates 6 prior testimony. 7 BY MR. OLSON: 8 Q Right? 9 A The proposal that we have here, we talked 10 about earlier, was dated 2000, was it? 11 Q September 2000. 12 A September 2000? 13 This letter was dated December 2000. So it 14 was probably my attempt to show both sides of the 15 issue from an economic standpoint or several sides 16 of the issue, which is my normal obligation to my 17 clients. 18 And I do not know whether this was a 19 specific request on the part of anybody or whether 20 it just became my idea and something to comment on. 21 Q Okay. Now, if you look at the third 22 paragraph -- 23 A Go ahead. 24 Q Why don't you review that third paragraph 25 that starts, "The guidelines."</p>
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<p>1 A I'm sorry. I haven't seen this letter for 2 ages. 3 Q Okay. You can put that aside. 4 A Okay. 5 What is this on the back? Anything? Oh, 6 it is taxpayer identification. 7 Go ahead. 8 (Deposition Exhibit 14 was marked for 9 identification by the court reporter 10 and is attached hereto.) 11 BY MR. OLSON: 12 Q Let me hand you what we've marked as Bell 13 14. 14 A Something I remember. 15 Q This is a document Bates-stamped 16 BELL-D-00028020 through -31. 17 And I'll ask if you can identify this as an 18 Egg Economics Update dated December 31, 2000 that 19 you authored? 20 A Yes, yes. 21 Q Okay. And you recall this particular 22 update? 23 A Yes. 24 Q And what it addresses is the economic 25 implications of reducing cage density in the U.S.,</p>	<p>1 A On the first page? 2 Q Yes. Let me know when you're done. 3 A Okay. 4 Q All right. You end it by saying, "Major 5 economic issues are involved with the question of 6 space and compliance with the specific space 7 allowance recommendations will be difficult to 8 accomplish by persuasion alone." 9 Do you see that? 10 A Yes. 11 Q And what did you mean by that? 12 A This is very -- at the root issue of bird 13 numbers that I can have in my chicken house. 14 And everything that I do on this farm has 15 to do with efficient use of facilities, egg 16 processing plants, feed mills, chicken houses, and 17 so on, and so it's a multi-faceted question and 18 problem. 19 And it would be, and I think it has turned 20 out to be, one of the most difficult for people to 21 accept all aspects of that. I think they lost 22 membership because -- because of too -- these 23 requirements are too stringent. But that's why I 24 said. 25 Q All right. And if you look at page 4,</p>

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<p>1 there is a heading that says, "Economic Benefits 2 From Reducing Cage Density"? 3 A Yes, yes. 4 Q And there is a subheading that says, 5 "National Participation to Balance Supply With 6 Demand." 7 Do you see that? 8 A Uh-huh. 9 Q You say, "A broad industry-wide acceptance 10 of the historically proven fact that the industry 11 makes more with less (more profits with less hens) 12 would be the greatest windfall of following the UEP 13 proposed guidelines." 14 Do you see that? 15 A I sure do. 16 Q And that was your view at the time, right? 17 A Yes. 18 Q And then in bold underlined it says, "The 19 task is to devise the method and motivation to 20 accomplish it voluntarily." 21 Do you see that? 22 A Yes. 23 Q And how was that ultimately done? 24 MR. TAKENOUCHI: Object to form. 25 THE WITNESS: How is what?</p>	<p>1 identified, to your knowledge, or how was that 2 solved? 3 MR. TAKENOUCHI: Objection to form. 4 THE WITNESS: Well, it says, "Following the 5 UEP proposed guidelines." Then it says, "The task 6 is to devise the method and motivation to accomplish 7 it voluntarily." 8 And that still exists today, it existed 9 when the program was first introduced. 10 BY MR. OLSON: 11 Q When you say "the program," you're talking 12 about the UEP-certified program? 13 A Yes, yes. 14 Q And that was the method to accomplish this? 15 MR. TAKENOUCHI: Objection to form. 16 BY MR. OLSON: 17 Q That program? 18 MR. TAKENOUCHI: Objection to form. 19 THE WITNESS: Let me think what you're 20 saying here. 21 "To devise the method and motivation to 22 accomplish it voluntarily." 23 BY MR. OLSON: 24 Q Right. 25 A To make more money with less hens.</p>
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<p>1 BY MR. OLSON: 2 Q Ultimately done. 3 A Ultimately done? 4 Q Yes. 5 A What are you saying? I'm not sure. 6 Q How was that task of encouraging national 7 participation -- 8 A Well, I assume -- 9 Q -- accomplished? 10 A -- at the time this was written maybe 11 20 percent of the industry was acceptable to the 12 idea, eventually maybe 80 percent. 13 Windfall is something that's unexpected. 14 Unexpected, so it is not planned. It is an 15 unexpected result that these things happen. 16 We didn't go in there -- nobody went in 17 there and said let's reduce the bird numbers by 18 20 million. Because back here someplace we said 19 that they are paying for a million. So we didn't 20 have a target. 21 Q I don't want to focus on the windfall part. 22 This idea of devising a method and motivation to 23 accomplish -- 24 A Uh-huh, yes. 25 Q -- was that method and motivation ever</p>	<p>1 Q Right. My question is: The UEP-certified 2 program was the method that was devised to 3 accomplish that goal, correct? 4 MR. TAKENOUCHI: Objection; misstates prior 5 testimony, speculation. 6 THE WITNESS: I claim there the task is to 7 devise, which means it hasn't been accomplished at 8 that point -- 9 BY MR. OLSON: 10 Q Right. 11 A -- or accepted at that point. 12 Q And at this point, the certified 13 certification expert -- 14 A I don't even use the word "certified." 15 Q So do you know what you're referring to, 16 the method that was devised to accomplish this? 17 A I say it's a task. And I didn't come right 18 in there and say the only way to do this is to 19 reduce the cages, I didn't say that. But we've 20 referred to that with examples within this whole 21 document. 22 Q Let me try this way. You say, "The task to 23 devise the method and motivation to accomplish it 24 voluntarily," was that task ever accomplished? 25 A I would say it was accomplished 80 percent,</p>

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<p>1 yeah.</p> <p>2 Q And you were referring to the UEP certified</p> <p>3 program participation?</p> <p>4 A Well, we are talking about cage density now</p> <p>5 and we're talking about the size of requirements,</p> <p>6 yes, and that was accomplished X percent by the</p> <p>7 auditing procedure.</p> <p>8 Are you familiar with that?</p> <p>9 Q Yes.</p> <p>10 A That the farms were audited by outside</p> <p>11 auditors, and did you meet your goal, did you meet</p> <p>12 your target. And I don't know what the penalty was</p> <p>13 if you didn't, but, anyway.</p> <p>14 Q All right. Now, if you look at page 11 --</p> <p>15 A Yeah.</p> <p>16 Q -- in your summary.</p> <p>17 A Got it.</p> <p>18 Q The third sentence says, "Increasing floor</p> <p>19 space allowances are difficult to justify for the</p> <p>20 individual farm, but if enough producers follow this</p> <p>21 practice, industry profits will be considerably</p> <p>22 higher as supply and demand reach a more optimum</p> <p>23 balance."</p> <p>24 Do you see that?</p> <p>25 A Yes.</p>	<p>1 whole thing is about, you follow the guidelines.</p> <p>2 And you tell a person he has to reduce his</p> <p>3 flock size by 20 percent, sure he can go build</p> <p>4 another chicken house for that 20 percent, he can do</p> <p>5 that --</p> <p>6 Q But that's expensive?</p> <p>7 A But that's expensive. And he's got -- he's</p> <p>8 already got the chickens and he's got a transition</p> <p>9 period to shift from 100 to 80. But when it comes</p> <p>10 time in the deadline and the audit says you still</p> <p>11 have 100 percent, and whatever the penalty is, I'm</p> <p>12 not aware of, but that's the issue.</p> <p>13 Q All right. You can put that aside.</p> <p>14 (Deposition Exhibit 15 was marked for</p> <p>15 identification by the court reporter</p> <p>16 and is attached hereto.)</p> <p>17 BY MR. OLSON:</p> <p>18 Q Let me hand you what we've marked Bell 15.</p> <p>19 MR. GODLSTEIN: Can we make that the last</p> <p>20 document for the day?</p> <p>21 MR. OLSON: Yes.</p> <p>22 Unfortunately, this is a document I just</p> <p>23 have two extra copies of.</p> <p>24 It is Bates-stamped BELL002774 through</p> <p>25 -2777.</p>
143	145
<p>1 Q And I know we've touched on this before,</p> <p>2 but what were you referring to there? What's the</p> <p>3 point you're making there?</p> <p>4 MR. TAKENOUCHI: Objection to form.</p> <p>5 THE WITNESS: One thing follows another.</p> <p>6 Increasing space means you reduce the population.</p> <p>7 Reducing the population reduces the production.</p> <p>8 Reducing the production brings profitability back</p> <p>9 into line or a reasonable profitability. Not</p> <p>10 excessive profitability, a reasonable.</p> <p>11 BY MR. OLSON:</p> <p>12 Q But this aspect about increasing floor</p> <p>13 space allowances are difficult to justify for the</p> <p>14 individual farm --</p> <p>15 A That's because he's got a hundred-case-</p> <p>16 an-hour machine and now you want him to run it at 80</p> <p>17 cases because you're going to reduce his burden</p> <p>18 numbers. He knows that right off the bat. He knows</p> <p>19 his feed mill is going to be shut down one day a</p> <p>20 week. He knows he's going to have to lay off some</p> <p>21 labor, and they've been working for him for 25</p> <p>22 years.</p> <p>23 So, you know, it's easy to say that and</p> <p>24 easy for me to recommend something like that, but</p> <p>25 they have to implement it. I mean, that's what the</p>	<p>1 Q And can you identify this as a document</p> <p>2 that you authored on April 15th, 2002?</p> <p>3 A This is called a memo, and this was started</p> <p>4 with my first relationship with UEP, which I've told</p> <p>5 them that I would do, and it would be all economic,</p> <p>6 it would be -- it would parallel some of the other</p> <p>7 reports that we also told them we would continue to</p> <p>8 produce.</p> <p>9 I'm not sure about this particular -- well,</p> <p>10 you want to go ahead and ask questions. Go ahead.</p> <p>11 Q That's helpful.</p> <p>12 This memo is something that UEP -- that you</p> <p>13 were compensated by UEP for writing?</p> <p>14 MR. TAKENOUCHI: Objection to form,</p> <p>15 misstates prior testimony.</p> <p>16 THE WITNESS: That's what we promised to</p> <p>17 include in our services.</p> <p>18 BY MR. OLSON:</p> <p>19 Q That's a better way of putting it. Thank</p> <p>20 you.</p> <p>21 You say this was written under the</p> <p>22 sponsorship of UEP?</p> <p>23 A Yes.</p> <p>24 Q Just backing up, this Egg Economics Update</p> <p>25 from the last exhibit, how would you describe this</p>

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<p>1 type of document?</p> <p>2 A Well, that was, I believe, started in 1983.</p> <p>3 And it grew out of all of our surveys and studies</p> <p>4 about the price of eggs and the cost of production.</p> <p>5 So it was intended to cover a broad range</p> <p>6 of subjects dealing with economics of the egg</p> <p>7 industry.</p> <p>8 Q And who would you send it to, typically?</p> <p>9 A Every producer and the allied industry</p> <p>10 person that requested to be on the mailing list.</p> <p>11 Q Was it a large mailing list?</p> <p>12 A Our original, when that thing was started,</p> <p>13 it was probably a thousand. Today we are -- we have</p> <p>14 a totally different industry that's shrunk, and</p> <p>15 we're still at a thousand.</p> <p>16 Q Okay. All right. Sorry.</p> <p>17 Now, back to Bell Exhibit 15, what you call</p> <p>18 the memo?</p> <p>19 A Yes.</p> <p>20 Q This is sometimes called a flock</p> <p>21 projection?</p> <p>22 A No, it isn't.</p> <p>23 Q Okay.</p> <p>24 A It says there "flock projection," but this</p> <p>25 is not the official -- this is a memo.</p>	<p>1 A Uh-huh.</p> <p>2 Q What are you referring to there?</p> <p>3 MR. TAKENOUCHI: Objection; foundation.</p> <p>4 THE WITNESS: Where do you see -- oh,</p> <p>5 competitor, next paragraph. Okay.</p> <p>6 You notice that we are talking about 69</p> <p>7 points instead of one cent, and that's because we</p> <p>8 are talking about a different time period.</p> <p>9 BY MR. OLSON:</p> <p>10 Q Okay.</p> <p>11 A Today that number is probably somewhat</p> <p>12 less.</p> <p>13 1 million is possible within several</p> <p>14 individual companies, but half of its reduction</p> <p>15 could be accomplished by two to five companies in</p> <p>16 the whole United States by just reducing their bird</p> <p>17 numbers count by one.</p> <p>18 Q And then I want to focus to the next</p> <p>19 sentence.</p> <p>20 A "We commonly hear the excuse 'If we do it,</p> <p>21 there is no guarantee my competitor would do it.'</p> <p>22 So I gained a competitive advantage because I didn't</p> <p>23 do it. The one guy has a hundred birds in his house</p> <p>24 and I've only got 80 and I've lost competitive</p> <p>25 advantage.</p>
147	149
<p>1 Q A memo, okay. All right.</p> <p>2 And the subject of this one was the effect</p> <p>3 on egg prices and flock performance of reducing cage</p> <p>4 density, right?</p> <p>5 A Yes.</p> <p>6 Q And the first thing you say is, "Reducing</p> <p>7 the nation's average cage density can have numerous</p> <p>8 positive effects on the income and costs of</p> <p>9 individual producers in the industry as a whole,"</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q Now, who are these memos distributed to?</p> <p>13 A I have no idea, but I believe UEP sent it</p> <p>14 to all their members.</p> <p>15 Q So you would send it to UEP, and they</p> <p>16 would --</p> <p>17 A Yes, I sent the original to UEP.</p> <p>18 Q All right.</p> <p>19 Let's just go to the fourth paragraph that</p> <p>20 starts, "A one-million hen reduction."</p> <p>21 A Yes.</p> <p>22 Q You say, "We commonly hear the excuse that</p> <p>23 'If we do it, there is no guarantee that my</p> <p>24 competitor will do it.'"</p> <p>25 Do you see that?</p>	<p>1 Q So is that the type of thing you would hear</p> <p>2 expressed --</p> <p>3 A That's the type of thing.</p> <p>4 Q -- by producers during the course of your</p> <p>5 work?</p> <p>6 A That's right.</p> <p>7 Q Now let's look at page 3.</p> <p>8 A Page 3? Okay.</p> <p>9 Q These are some data you provided.</p> <p>10 A Statistics, right.</p> <p>11 Q Statistic. I wanted to look at number 6</p> <p>12 called "Force Molting."</p> <p>13 A You are on page 33?</p> <p>14 Q Yes.</p> <p>15 A Excuse me. Go ahead.</p> <p>16 Q All right. And there is data regarding</p> <p>17 force molting?</p> <p>18 A Yes.</p> <p>19 Q Now, this force molting, that's the forced</p> <p>20 starvation of feed withdrawal from the hen, right?</p> <p>21 A At that time that was a very common way,</p> <p>22 yes.</p> <p>23 Q And what this indicates is that from 2000</p> <p>24 to 2001 molting increased, right?</p> <p>25 A Let me explain something. Okay?</p>

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<div>1 This does not say what percentage of the</div> <div>2 chickens are molted, it says what percentage of the</div> <div>3 chickens have been molted or are being molted.</div> <div>4 Q Okay.</div> <div>5 A Actually, at this point in time probably</div> <div>6 two-thirds to 70 percent of all chickens were</div> <div>7 molted.</div> <div>8 Q Okay.</div> <div>9 A Do you follow the difference between that</div> <div>10 statement?</div> <div>11 Q I think so.</div> <div>12 A Okay. Go ahead.</div> <div>13 Q And what you show here is from 2000 to</div> <div>14 2001 --</div> <div>15 A There was a slight increase.</div> <div>16 Q -- force molting, there was an increase?</div> <div>17 A In January and for the two months. And we</div> <div>18 would start to think, well, January and February, is it</div> <div>19 this thing going to go three or four months, is it</div> <div>20 going to keep going? If it keeps going, then people</div> <div>21 will start to say, well, maybe it is going to result</div> <div>22 in less eggs.</div> <div>23 Q And also there was more molting happening</div> <div>24 in January and February of 2002 than January and</div> <div>25 February of 2000?</div>	<div>1 MR. TAKENOUCHI: Objection to form.</div> <div>2 THE WITNESS: That's the one letter we</div> <div>3 wrote way back here that says it is not a matter of</div> <div>4 molting versus not molting, it is a matter of egg</div> <div>5 production.</div> <div>6 BY MR. OLSON:</div> <div>7 Q And if you look at point 7, slaughter -- do</div> <div>8 you see that?</div> <div>9 A Go ahead.</div> <div>10 Q That's the number of birds that are</div> <div>11 slaughtered?</div> <div>12 A In a USDA slaughter plant.</div> <div>13 Q Yes. And from 2000 to 2002 there was an</div> <div>14 increase in the number of birds that were</div> <div>15 slaughtered --</div> <div>16 A That's what it says.</div> <div>17 Q -- as well?</div> <div>18 All right. That's all. We can take a</div> <div>19 break.</div> <div>20 THE VIDEOGRAPHER: Off the record.</div> <div>21 We are off the record. The time is 1:16</div> <div>22 p.m.</div> <div>23 (TIME NOTED: 1:16 p.m.)</div> <div>24</div> <div>25</div>																																																
151	153																																																
<div>1 A That's what it says, yeah. And then 2002</div> <div>2 you went back down.</div> <div>3 Q No, but 2002 is still more than what's</div> <div>4 happening in 2000?</div> <div>5 A Oh, yeah, yeah, yeah. This is normal</div> <div>6 fluctuation.</div> <div>7 Q Okay. But it's an increase -- just stick</div> <div>8 with me for a moment.</div> <div>9 A Go ahead.</div> <div>10 Q In both 2001 and 2002 there was more</div> <div>11 molting happening than in the same period --</div> <div>12 A Yes, exactly.</div> <div>13 Q And isn't it kind of odd that was happening</div> <div>14 when the guidelines say that force molting has</div> <div>15 animal welfare problems?</div> <div>16 A No.</div> <div>17 MR. TAKENOUCHI: Objection to form,</div> <div>18 misstates prior testimony.</div> <div>19 BY MR. OLSON:</div> <div>20 Q Why did molting increase if the Scientific</div> <div>21 Advisory Committee --</div> <div>22 A Because they decided economically that it</div> <div>23 was justified.</div> <div>24 Q And it wasn't prohibited either, was it?</div> <div>25 A Never prohibited.</div>	<div>1 ACKNOWLEDGMENT OF DEPONENT</div> <div>2 I, DONALD L. BELL, do hereby certify</div> <div>3 that I have read the foregoing transcript of my</div> <div>4 testimony, and further certify that it is a true</div> <div>5 and accurate record of my testimony (with the</div> <div>6 exception of the corrections listed below):</div> <table><tr><td>Page</td><td>Line</td><td>Correction</td></tr><tr><td>7</td><td></td><td></td></tr><tr><td>8</td><td></td><td></td></tr><tr><td>9</td><td></td><td></td></tr><tr><td>10</td><td></td><td></td></tr><tr><td>11</td><td></td><td></td></tr><tr><td>12</td><td></td><td></td></tr><tr><td>13</td><td></td><td></td></tr><tr><td>14</td><td></td><td></td></tr><tr><td>15</td><td></td><td></td></tr><tr><td>16</td><td></td><td></td></tr><tr><td>17</td><td></td><td></td></tr><tr><td>18</td><td></td><td></td></tr><tr><td>19</td><td></td><td></td></tr><tr><td>20</td><td></td><td></td></tr><tr><td>21</td><td></td><td></td></tr></table> <div>22</div> <div>23 DONALD L. BELL</div> <div>24</div> <div>25 SUBSCRIBED AND SWORN TO BEFORE ME</div> <div>THIS ____ DAY OF _____, 20__.</div> <div>26</div> <div>27 (NOTARY PUBLIC) MY COMMISSION EXPIRES:</div>	Page	Line	Correction	7			8			9			10			11			12			13			14			15			16			17			18			19			20			21		
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1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were placed under oath; that a
8 true and correct record of the proceedings was made
9 by me using machine shorthand which was thereafter
10 transcribed under my direction; further, that the
11 foregoing is an accurate transcription thereof.

12 I further certify that I am neither
13 financially interested in the action nor a relative
14 or employee of any attorney of any of the parties.

15 IN WITNESS WHEREOF, I have this date
16 subscribed my name.

17 Dated: 8/23/13
18
19

20 _____
DENISE BARDSLEY
CSR No. 11241
21
22
23
24
25

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EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

)
IN RE: PROCESSED EGG)
PRODUCTS ANTITRUST)
LITIGATION)
_____)MDL No. 2002
)08-MD-0200

THIS DOCUMENT APPLIES TO:)
ALL ACTIONS)
_____)

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VIDEOTAPED DEPOSITION OF DONALD L. BELL
Riverside, California
Wednesday, August 21, 2013
Volume II

Reported by:
DENISE BARDSLEY
CSR No. 11241

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<p style="text-align: right;">156</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA 3 _____) 4 IN RE: PROCESSED EGG) 5 PRODUCTS ANTITRUST) 6 LITIGATION))MDL No. 2002 7 _____)08-MD-0200 8 THIS DOCUMENT APPLIES TO:) 9 ALL ACTIONS) 10 _____) 11 12 Videotaped deposition of DONALD L. BELL, 13 Volume II, taken on behalf of The Direct Purchaser 14 Plaintiffs, at 3500 Market Street, Riverside, 15 California, beginning at 10:09 a.m. and ending at 16 3:53 p.m. on Wednesday, August 21, 2013, before 17 DENISE BARDSLEY, Certified Shorthand Reporter 18 No. 11241. 19 20 21 22 23 24 25</p>	<p style="text-align: right;">158</p> <p>1 APPEARANCES (continued): 2 3 For The Indirect Purchaser Plaintiffs: 4 MILBERG LLP 5 One Pennsylvania Plaza 6 New York, New York 10119 7 (646) 733-5727 8 (No appearance.) 9 10 For Indirect Purchaser Plaintiffs 11 LOVELL STEWART HALEBIAN & JACOBSON LLP 12 BY: MERRICK SCOTT RAYLE 13 Attorney at Law 14 61 Broadway, Suite 501 15 New York, New York 10006 16 (212) 608-1900 17 msrayle@sbcglobal.net 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">157</p> <p>1 APPEARANCES: 2 3 For The Direct Purchaser Plaintiffs: 4 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP 5 BY: STEIG D. OLSON 6 Attorney at Law 7 51 Madison Avenue, 22nd Floor 8 New York, New York 10010 9 (212) 849-7152 10 steigolson@quinnemanuel.com 11 12 For The Direct Purchaser Plaintiffs: 13 HAUSFELD, LLP 14 BY: JAMES J. PIZZIRUSSO 15 Attorney at Law 16 1604 Locust Street, 2nd Floor 17 Philadelphia, Pennsylvania 19103 18 (215) 985-3270 19 jpizzirusso@hausfeldllp.com 20 21 22 23 24 25</p>	<p style="text-align: right;">159</p> <p>1 APPEARANCES (continued): 2 3 For the Deponent: 4 UNIVERSITY OF CALIFORNIA 5 BY: MICHAEL R. GOLDSTEIN 6 Attorney at Law 7 1111 Franklin Street, 8th Floor 8 Oakland, California 94607 9 (510) 987-9895 10 michael.goldstein@ucop.edu 11 12 For Midwest Poultry Services: 13 FAEGRE BAKER DANIELS 14 BY: KATHY L. OSBORN 15 Attorney at Law 16 300 North Meridian Street, Suite 2700 17 Indianapolis, Indiana 46204-1750 18 (317) 237-1144 19 kathy.osborn@faegrebd.com 20 (Telephonic appearance.) 21 22 23 24 25</p>

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<p style="text-align: right;">160</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For RW Sauder, Inc.:</p> <p>4 DECHERT LLP</p> <p>5 2929 Arch Street</p> <p>6 Philadelphia, Pennsylvania 19104</p> <p>7 (215) 994-2421</p> <p>8 (No appearance.)</p> <p>9</p> <p>10 For United Egg Producers and the United States Egg</p> <p>11 Marketers:</p> <p>12 PEPPER HAMILTON, LLP</p> <p>13 BY: WHITNEY REDDING</p> <p>14 Attorney at Law</p> <p>15 3000 Two Logan Square</p> <p>16 Philadelphia, Pennsylvania 19103</p> <p>17 (215) 981-4714</p> <p>18 reddingw@pepperlaw.com</p> <p>19 (Telephonic appearance.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">162</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Rose Acre Farms:</p> <p>4 PORTER, WRIGHT, MORRIS & ARTHUR</p> <p>5 BY: KARRI ALLEN</p> <p>6 BY: JOHN C. MONICA, JR.</p> <p>7 Attorneys at Law</p> <p>8 1919 Pennsylvania Avenue NW, Suite 500</p> <p>9 Washington, D.C. 20006</p> <p>10 (202) 778-3056</p> <p>11 kallen@porterwright.com</p> <p>12 (Telephonic appearance.)</p> <p>13</p> <p>14 For Nu-Cal Foods, Inc.:</p> <p>15 KASOWITZ BENSON TORRES & FRIEDMAN, LLP</p> <p>16 BY: JASON S. TAKENOUCI</p> <p>17 Attorney at Law</p> <p>18 101 California Street</p> <p>19 San Francisco, California 94111</p> <p>20 (415) 655-4335</p> <p>21 jtakenouchi@kasowitz.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">161</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Giant Eagle, Inc.:</p> <p>4 MARCUS & SHAPIRA LLP</p> <p>5 One Oxford Center, 35th Floor</p> <p>6 Pittsburgh, Pennsylvania 15219</p> <p>7 (412) 338-3344</p> <p>8 (No appearance.)</p> <p>9</p> <p>10 For Cal-Maine Foods, Inc.:</p> <p>11 GIBSON, DUNN & CRUTCHER LLP</p> <p>12 2100 McKinney Avenue</p> <p>13 Dallas, Texas 75201-6912</p> <p>14 (214) 698-3279</p> <p>15 (No appearance.)</p> <p>16</p> <p>17 For Sparboe Farms, Inc.:</p> <p>18 BRIGGS AND MORGAN</p> <p>19 2200 IDS Center</p> <p>20 80 South 8th Street</p> <p>21 Minneapolis, Minnesota 55402</p> <p>22 (612) 977-8415</p> <p>23 (No appearance.)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">163</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Hillandale Farms, Inc., Hillandale Farms East,</p> <p>4 Inc., Hillandale Gettysburg LP and Hillandale Farms</p> <p>5 of Pa., Inc.:</p> <p>6 BUCHANAN, INGERSOLL & ROONEY</p> <p>7 Two Liberty Place</p> <p>8 50 South 16th Street, Suite 3200</p> <p>9 Philadelphia, Pennsylvania 19102</p> <p>10 (215) 665-3884</p> <p>11 (No appearance.)</p> <p>12</p> <p>13 For the Direct Action Plaintiffs:</p> <p>14 JENNER & BLOCK</p> <p>15 BY: STEPHEN R. BROWN</p> <p>16 BY: RICHARD CAMPBELL (Telephonic appearance)</p> <p>17 Attorneys at Law</p> <p>18 353 North Clark Street, Suite 4500</p> <p>19 Chicago, Illinois (312) 840-7282</p> <p>20 (312) 840-7282</p> <p>21 stephenbrown@jenner.com</p> <p>22 richardcampbell@jenner.com</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">164</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Defendant Michael Foods:</p> <p>4 WEIL, GOTSHAL & MANGES LLP</p> <p>5 1300 Eye Street N.W., Suite 900</p> <p>6 Washington, D.C. 20005</p> <p>7 (202) 682-7231</p> <p>8 (No appearance.)</p> <p>9</p> <p>10 For Weaver Brothers:</p> <p>11 DISNMORE & SHOHL LLP</p> <p>12 1100 Courthouse Plaza SW</p> <p>13 10 North Ludlow Street</p> <p>14 Dayton, Ohio 45402</p> <p>15 (937) 463-4928</p> <p>16 (No appearance.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">166</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Michael Foods:</p> <p>4 LEONARD, STREET & DEINARD</p> <p>5 BY: PETER J. SCHWINGLER</p> <p>6 Attorney at Law</p> <p>7 150 South Fifth Street, Suite 2300</p> <p>8 Minneapolis, Minnesota 55402</p> <p>9 612 335-7023</p> <p>10 peterschwingler@leonard.com</p> <p>11 (Telephonic appearance.)</p> <p>12</p> <p>13 For Ohio Fresh Eggs:</p> <p>14 KEATING MUETHING & KLEKAMP PLL</p> <p>15 BY: BRYCE YODER</p> <p>16 Attorney at Law</p> <p>17 One East Fourth Street, Suite 1400</p> <p>18 Cincinnati, Ohio 45202-3752</p> <p>19 (513) 579-6400</p> <p>20 jcallow@kmmklaw.com</p> <p>21 (Telephonic appearance.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">165</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Moark LLC and Norco Ranch, Inc.</p> <p>4 EIMER STAHL, LLP</p> <p>5 BY: TRAVIS KENNEDY</p> <p>6 Attorney at Law</p> <p>7 224 South Michigan Avenue, Suite 1300</p> <p>8 Chicago, Illinois 60604</p> <p>9 (312) 660-7604</p> <p>10 tkennedy@eimerstahl.com</p> <p>11 (Telephonic appearance.)</p> <p>12</p> <p>13 For Winn-Dixie, Inc., Roundy's Supermarkets, Inc.,</p> <p>14 C&S Wholesaler Grocers, Inc., and H.J. Heinz</p> <p>15 Company, L.P.:</p> <p>16 BAKER & McKENZIE LLP</p> <p>17 300 East Randolph Street</p> <p>18 Chicago, Illinois 60601</p> <p>19 (312) 861-3735</p> <p>20 (No appearance.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">167</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 Videographer:</p> <p>4 SCOTT SLATER, VERITEXT</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 INDEX (Continued):</p> <p>2</p> <p>3 EXHIBITS</p> <p>4 EXHIBIT DESCRIPTION PAGE</p> <p>5 Exhibit 19 E-mail from Don Bell to Al 214</p> <p>6 Pope, 3/24/04, with attachment</p> <p>7 Bates Nos. UE0880125 - -127</p> <p>8</p> <p>9 Exhibit 20 Don Bell's Table Egg Layer 219</p> <p>10 Flock Projections and Economic</p> <p>11 Commentary - 2004, No. 44</p> <p>12 Bates Nos. BELL-D-00028600 - -611</p> <p>13</p> <p>14 Exhibit 21 Shell Egg Marketing Committee, 227</p> <p>15 10/20/04, New Orleans Minutes</p> <p>16 Bates Nos. UE0153245 - -246</p> <p>17</p> <p>18 Exhibit 22 Joint Meeting of UEP Scientific 232</p> <p>19 Advisory Committee and UEP</p> <p>20 Producer Committee For Animal</p> <p>21 Welfare, June 10-11, 2004,</p> <p>22 Chicago, Illinois, Minutes</p> <p>23 Bates Nos. UE0294465 - -468</p> <p>24</p> <p>25</p>	<p>1 INDEX (Continued):</p> <p>2</p> <p>3 EXHIBITS</p> <p>4 EXHIBIT DESCRIPTION PAGE</p> <p>5 Exhibit 28 U.S. Farm and Retail Egg Price 260</p> <p>6 Relationships - 1982 to 2005,</p> <p>7 Changing Share of the Consumer's</p> <p>8 Egg Dollar</p> <p>9 Bates Nos. UE0155821 - -831</p> <p>10</p> <p>11 Exhibit 29 Cooperative Extension, University 325</p> <p>12 of California, No. 217, 7/12/99,</p> <p>13 An Egg Economics Update, Donald</p> <p>14 Bell, Poultry Specialist</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 Riverside, California, Wednesday, August 21, 2013</p> <p>2 10:09 a.m.</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Good morning.</p> <p>5 We are on the record at approximately 10:09</p> <p>6 a.m. on August 21st, 2013.</p> <p>7 This is the video-recorded deposition of</p> <p>8 Don Bell, Volume II. My name is Stan Beverly, here</p> <p>9 with our court reporter, Denise Bardsley. We're</p> <p>10 here from Veritext National Deposition and</p> <p>11 Litigation Services at the request of counsel for</p> <p>12 the Direct Purchaser Plaintiffs.</p> <p>13 This deposition is being held at 3500</p> <p>14 Market Street in the city of Riverside. The caption</p> <p>15 of this case is In Re: Processed Egg Products</p> <p>16 Antitrust Litigation, Case No. 200208-MB-200.</p> <p>17 Please note that audio and video recording</p> <p>18 will take place unless all parties agree to go off</p> <p>19 the record. Microphones are sensitive and may pick</p> <p>20 up whispers, private conversations and cellular</p> <p>21 interference.</p> <p>22 I'm not authorized to administer an oath, I</p> <p>23 am not related to any party in this action, nor am I</p> <p>24 financially interested in the outcome in any way.</p> <p>25 May I please have an agreement from all</p>	<p>1 MR. OLSON: Anyone else?</p> <p>2 All right. This is Steig Olson from Quinn</p> <p>3 Emanuel Urquhart & Sullivan for the Direct Purchaser</p> <p>4 Plaintiffs.</p> <p>5 MR. PIZZIRUSSO: James Pizzirusso, Hausfeld</p> <p>6 LLP, Direct Purchaser Plaintiffs.</p> <p>7 MR. BROWN: Stephen Brown from Jenner &</p> <p>8 Block for Direct Action Plaintiff, Kraft, General</p> <p>9 Mills and Nestle.</p> <p>10 MR. RAYLE: Merrick Rayle from Lovell</p> <p>11 Stewart Halebian & Jacobson for the Indirect</p> <p>12 Purchaser Plaintiffs.</p> <p>13 MR. TAKENOUCHI: Jason Takenouchi of</p> <p>14 Kasowitz Benson Torres & Friedman, LLP, for</p> <p>15 Defendant Nu-Cal Foods, Inc.</p> <p>16 MR. GODLSTEIN: Michael Goldstein with the</p> <p>17 Regents of the University of California for the</p> <p>18 witness, Mr. Bell. And with me here today is</p> <p>19 Kristen Erving, our paralegal.</p> <p>20 THE VIDEOGRAPHER: The witness will be</p> <p>21 sworn in and counsel may begin the examination.</p> <p>22 //</p> <p>23 //</p> <p>24</p> <p>25</p>
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<p>1 parties that we can proceed.</p> <p>2 MR. OLSON: Yes.</p> <p>3 MR. GODLSTEIN: Yes.</p> <p>4 MR. RAYLE: Yes.</p> <p>5 THE VIDEOGRAPHER: At this time will</p> <p>6 counsel and all present identify themselves for the</p> <p>7 record.</p> <p>8 MR. OLSON: Let's start on the phone.</p> <p>9 Could the folks on the phone identify themselves.</p> <p>10 MR. CAMPBELL: Richard Campbell, Jenner &</p> <p>11 Block for the Kraft plaintiffs.</p> <p>12 MS. REDDING: Whitney Redding, Pepper</p> <p>13 Hamilton, for United Egg Producers and United States</p> <p>14 Egg Marketers.</p> <p>15 MR. SCHWINGLER: Peter Schwingler, Leonard,</p> <p>16 Street & Deinard, for Michael Foods.</p> <p>17 MS. OSBORN: Kathy Osborn for Midwest</p> <p>18 Poultry, with Faegre Baker Daniels.</p> <p>19 MR. MONICA: John Monica and Kerri Allen</p> <p>20 from Porter, Wright, Morris & Arthur, Rose Acre</p> <p>21 Farms.</p> <p>22 MS. KENNEDY: Travis Kennedy from Eimer</p> <p>23 Stahl, for Moart, LLC, and Norco Ranch, Inc.</p> <p>24 MR. YODER: Bryce Yoder from Keating</p> <p>25 Muething & Klekamp, on behalf of Ohio Fresh Eggs.</p>	<p>1 DONALD L. BELL,</p> <p>2 having been administered an oath, was examined and</p> <p>3 testified as follows:</p> <p>4</p> <p>5 EXAMINATION</p> <p>6 BY MR. OLSON:</p> <p>7 Q Good morning, Mr. Bell.</p> <p>8 A Good morning.</p> <p>9 Q How are you today?</p> <p>10 A Feeling good.</p> <p>11 Q Good. Are you prepared to testify</p> <p>12 truthfully to the best of your knowledge today?</p> <p>13 A Yes.</p> <p>14 Q Okay. And as with yesterday, if at any</p> <p>15 time you need to take a break or do anything to</p> <p>16 refresh yourself, just let us know.</p> <p>17 A Yes.</p> <p>18 (Deposition Exhibit 16 was marked for</p> <p>19 identification by the court reporter</p> <p>20 and is attached hereto.)</p> <p>21 BY MR. OLSON:</p> <p>22 Q Thank you.</p> <p>23 All right. I've handed you what's been</p> <p>24 marked Bell Exhibit 16. This is a document</p> <p>25 Bates-stamped UE0135717 through -135726.</p>

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<p>1 And, Mr. Bell, have you had a chance to</p> <p>2 briefly look at this document?</p> <p>3 A Very briefly, uh-huh.</p> <p>4 Q Okay. Can you identify it as a United</p> <p>5 Voices publication dated July 29, 2002?</p> <p>6 A Yes, I can.</p> <p>7 Q And it attaches a -- what you've referred</p> <p>8 to as a memoranda that you've prepared under the</p> <p>9 sponsorship of UEP; is that right?</p> <p>10 A That's correct. We called it a memo, but</p> <p>11 that's okay.</p> <p>12 Q A memo.</p> <p>13 And the date of this memo is July 16, 2002;</p> <p>14 is that --</p> <p>15 A Yes, sir.</p> <p>16 Q All right. And the title of it is,</p> <p>17 "Several Possible Scenarios Resulting From UEP's New</p> <p>18 Husbandry Guidelines"; is that right?</p> <p>19 A Yes.</p> <p>20 Q And, specifically, it is a discussion of</p> <p>21 what aspect of the husbandry guidelines?</p> <p>22 A The introduction refers to the effects of</p> <p>23 the industry's potential reduction of cage</p> <p>24 densities. That seems to be the foremost --</p> <p>25 Q So, in other words, what you're looking at</p>	<p>1 other words, it would be a transition period under</p> <p>2 which everyone has an opportunity to get their goal.</p> <p>3 It's impossible to get to your goal</p> <p>4 overnight, so it's a -- apparently it's about a</p> <p>5 six-year -- in the table, a six-year period to</p> <p>6 eventually get to your goal.</p> <p>7 Q And you refer, actually, to a seven-year</p> <p>8 period in this discussion?</p> <p>9 A Okay. That's --</p> <p>10 Q Do you see that?</p> <p>11 A Well, I don't see where -- where is that --</p> <p>12 I see that, yes.</p> <p>13 Q Do you see where you write, "the producer's</p> <p>14 committee has advised that such changes shall take</p> <p>15 place over a seven-year period from 2002 to 2008 in</p> <p>16 order to cause the least disruption in production</p> <p>17 and marketing processes."</p> <p>18 Do you see that?</p> <p>19 A That would be the UEP's committee and not</p> <p>20 the Scientific Advisory Committee.</p> <p>21 Q Right. And is that consistent with your</p> <p>22 knowledge of why the UEP producer committee decided</p> <p>23 that there should be this seven-year period?</p> <p>24 A It could have been more, it could have been</p> <p>25 less. I assume this was some kind of a compromise</p>
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<p>1 are scenarios regarding the cage density aspect of</p> <p>2 the guidelines?</p> <p>3 A Yes. Yes, sir.</p> <p>4 Q Okay. And who asked you, if anyone, to</p> <p>5 prepare this memo?</p> <p>6 A Well, the introduction says, "Gene Gregory</p> <p>7 asked me," and at that time I'm not sure whether he</p> <p>8 was president or vice president of UEP.</p> <p>9 Q So Mr. Gregory from UEP had asked you to</p> <p>10 prepare --</p> <p>11 A Yes, sir.</p> <p>12 Q -- this memo?</p> <p>13 And at this time you were on retainer by</p> <p>14 UEP to prepare these types of documents, correct?</p> <p>15 A Yes.</p> <p>16 Q All right. If you look at the "Background"</p> <p>17 section it refers to the cage space standards that</p> <p>18 UEP had developed.</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And it says, "The standards described the</p> <p>22 stepwise introduction of increased space</p> <p>23 allowances."</p> <p>24 What were you referring to there?</p> <p>25 A "Standards described the stepwise" -- in</p>	<p>1 among the members.</p> <p>2 Q But the goal was to avoid or to minimize</p> <p>3 disruption in production?</p> <p>4 MR. TAKENOUCHI: Objection; foundation.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. OLSON:</p> <p>7 Q Did you attend meetings of the UEP producer</p> <p>8 committee?</p> <p>9 A No.</p> <p>10 Q Never?</p> <p>11 A Never, never, never? They may have been</p> <p>12 part of the annual meeting where I made a</p> <p>13 presentation. There was no formal attendance at</p> <p>14 their meetings. I don't think they really</p> <p>15 encouraged it. They may have had the chairperson of</p> <p>16 our -- of the scientific committee.</p> <p>17 If I attended, it would have been in</p> <p>18 association with their annual meeting.</p> <p>19 Q Now, strictly from the standpoint of supply</p> <p>20 management, did you anticipate any benefit from the</p> <p>21 fact that the guidelines involved this stepwise</p> <p>22 increase of cage space allowances over a seven-year</p> <p>23 period?</p> <p>24 MR. TAKENOUCHI: Objection to form.</p> <p>25 THE WITNESS: Obviously, the intent of</p>

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<p>1 reducing the overpopulation of chickens was intended 2 to take time. This was an animal welfare issue, and 3 it couldn't be done without extreme disruption of 4 individual companies' replacement policies. 5 It takes five to six months to grow a young 6 chicken. And then there's another eight or ten 7 flocks alive that are producing eggs for the 8 company. And overnight would totally disrupt the 9 marketing of eggs and the supply of eggs in the 10 United States. 11 BY MR. OLSON: 12 Q Let me try it again. 13 Putting the disruption issue to one side -- 14 A Okay. Go ahead. 15 Q As we discussed yesterday, the goal of 16 supply management and balancing supply and demand 17 was one you thought was important? 18 A I do. 19 Q Focusing on that goal, did you anticipate 20 benefits to the industry resulting from the fact 21 that the guidelines contemplated a seven-year 22 stepwise increase of cage space allowances? 23 MR. TAKENOUCHI: Objection to the extent 24 the term "benefits" is unclear. 25 THE WITNESS: I anticipated a partial</p>	<p>1 from day 1, did you anticipate a benefit from their 2 stepwise increase over each of the seven years, a 3 benefit in the industry? 4 MR. TAKENOUCHI: Objection; speculation. 5 THE WITNESS: The benefits could only go to 6 year 7. If you started the very first year and took 7 care of your entire responsibility, then you were 8 going to have the lower density for the entire seven 9 years. But you didn't have to meet the obligations, 10 except for these dates here that are on this chart. 11 So you were not required to do it in the first year. 12 BY MR. OLSON: 13 Q Right. Well, let's make sure we're 14 speaking the same language. 15 A Go ahead. 16 Q Your point is under the program, a producer 17 wasn't required to get to 67 inches right away? 18 A Right. 19 Q But there were requirements for each year 20 under the program, right? 21 A Yes. That's what is spelled out here. 22 There is a different total allowance for each year. 23 Q Right. And those numbers are going up; in 24 other words, each year a producer had to increase 25 the space allowance?</p>
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<p>1 benefit the first year, more benefit the second year 2 and final benefit the seventh year. That would be 3 the ultimate benefit. 4 BY MR. OLSON: 5 Q And how about years three through six? 6 A The same, I'm not giving you every single 7 year, but -- 8 Q Okay. So just to be clear -- 9 A -- progressively. 10 Q -- a progressive benefit over the course of 11 the seven years? 12 A Yes. 13 MR. TAKENOUCHI: Objection to form. 14 BY MR. OLSON: 15 Q And just to be clear, you anticipated a 16 progressive benefit over the course of the seven 17 years? 18 A Yes. 19 Q And why was that? 20 A Because everyone was not required to comply 21 every year to the same extent. They were required 22 to comply by the seventh year. And that's when 23 everyone should have gotten to their goal of flock 24 size, density, the whole issue. 25 Q But even for those folks who were signed up</p>	<p>1 A Uh-huh -- yes. 2 Q So my question is, for those producers who 3 signed up on year 1 and met their space allowance 4 for year 1 and then for year 2, year 3, did you 5 anticipate a benefit to the industry that was 6 progressive over those years? 7 A A partial benefit, yes. 8 MR. TAKENOUCHI: Objection to form. 9 BY MR. OLSON: 10 Q And why do you say "a partial benefit"? 11 A Because it's not 100 percent. 12 Q Okay. But it would be a progressive 13 benefit? 14 A Progressive benefit, based upon the entire 15 population and which ones decided to go all the way 16 at the beginning or only go, as the table shows, up 17 to a certain level of square inches. 18 No one is required to have 67 square inches 19 in the first year or the second. The question of 20 logistics, how do you accomplish this, is an 21 independent problem for every producer because they 22 don't all have the same size cage. 23 You cannot reduce everybody the same amount 24 each year because they are starting with larger 25 cages and smaller cages.</p>

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<p style="text-align: right;">184</p> <p>1 Q And now stepping back for the industry as a 2 whole, did you anticipate, based on the work and 3 analysis you had done, a progressive benefit over 4 the course of the seven years for the industry as a 5 whole? 6 MR. TAKENOUCHI: Objection to form. 7 THE WITNESS: I think I've said that 8 already, yes. 9 BY MR. OLSON: 10 Q And that benefit would be in terms of 11 better management of supply and better prices? 12 MR. TAKENOUCHI: Objection; restates prior 13 testimony. Objection to form. 14 THE WITNESS: The result of -- of the 15 animal welfare plan and the implementation of it and 16 the dates of it and the individual companies' 17 responses, all of these things have to be taken into 18 consideration. 19 BY MR. OLSON: 20 Q And the benefit of that plan was what? 21 A It would have accrued to the entire 22 industry. 23 Q And the benefit that would have accrued to 24 the entire industry was what? 25 A Higher prices.</p>	<p style="text-align: right;">186</p> <p>1 previously unused farms or houses may have 2 occurred." 3 Do you see that? 4 A Yes, sir. 5 Q And so this concept of backfilling was 6 something that you anticipated might occur? 7 A That would -- that would make the analysis 8 less certain because it's an individual choice to 9 backfill or not to backfill, and it would probably 10 never make the final outcome off by more than 5 or 11 10 percent, because you only have so many empty 12 cages. And, also, it's a policy for many companies 13 not to backfill at all. 14 Q But just as a preliminary point -- 15 A Uh-huh. 16 Q -- the idea that some companies might 17 backfill was a possibility you recognized? 18 A Yes. 19 MR. TAKENOUCHI: Objection to form. 20 BY MR. OLSON: 21 Q Now, if you turn to the next page -- well, 22 actually, still at the bottom of 2, another variable 23 you mentioned was the introduction of new houses or 24 farms. 25 Do you see that --</p>
<p style="text-align: right;">185</p> <p>1 Q Now, in this piece you mention a couple of 2 variables that you looked at in your modeling, true? 3 A Yes. 4 Q Sometimes I have to ask just preliminary 5 questions like that. 6 A Okay. 7 Q And one of those was this concept of 8 backfilling; is that right? 9 A Yes. 10 Q You anticipated that some backfilling would 11 occur and that it was variable in how this would 12 unfold? 13 A Would you refer to the comment about 14 backfilling? 15 Q Yes. If you look at page 2. 16 A Page 2? 17 MR. TAKENOUCHI: Counsel, I'm just going to 18 object to the form of these questions. It's unclear 19 whether he's reading from the document or -- 20 MR. OLSON: You can just object to form. 21 That's fine. 22 Q Now, on page 2 -- 23 A Item 1 here? 24 Q Yes. You say, "Increases in hen counts by 25 backfilling cages at 'push-out' time or by utilizing</p>	<p style="text-align: right;">187</p> <p>1 A Yes. 2 Q -- heading? 3 And then it's discussed a little bit more 4 on the next page. 5 A Uh-huh. 6 Q And -- 7 A Yes, sir. 8 Q -- if you look, there is a large paragraph 9 there that starts "The model looks at." 10 Why don't you review that paragraph to 11 yourself? 12 A I did. 13 Q Okay. 14 A The model looks at different growth rates 15 in the industry, beginning in 2002 going to 2010. 16 Q And when you refer to growth rates, what -- 17 A Numbers of chickens or numbers of eggs. 18 MR. GODLSTEIN: Don, you're doing a really 19 great job, but I want to remind you to wait for 20 Steig to get his entire question out before you jump 21 in with your answer. 22 THE WITNESS: Okay. 23 BY MR. OLSON: 24 Q At the end of that paragraph you write, "It 25 is hoped that the industry will be able to sustain</p>

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<p>1 an improved supply/demand relationship as a result 2 of these major changes." 3 Do you see that? 4 A Yes. 5 Q Why was that the hope? 6 A Due to the average or annual variation of 7 profitability in the industry, it's not considered 8 to be 100 percent profitable, and my own 9 interpretation of this is that it's -- it has a lot 10 of problems with earnings, and therefore, price. 11 Q And why was there hope at this time that 12 the cage space guidelines could lead to a sustained 13 improvement in the supply/demand relationship? 14 MR. TAKENOUCHI: Objection; lack of 15 personal knowledge to the extent he's speaking for 16 anyone other than himself. 17 THE WITNESS: The existence of a single 18 chicken house has a maximum capacity and it has a 19 UEP recommended capacity. And until -- and once 20 you've reached the UEP number, the only way that you 21 can affect the population in the United States is 22 either through productivity of the individual 23 chicken, which it does increase every year, or by 24 someone building a new complex or new houses, 25 because the new capacity of that house is a</p>	<p>1 Go ahead. 2 MR. TAKENOUCHI: Objection to form. 3 THE WITNESS: Immediately the house is 4 going to cost more per bird as you remove 20 percent 5 of the birds. The per-bird cost is going to go up. 6 Costs, in general, go up annually with the 7 economics of the time. Lumber costs go up and the 8 metal costs go up, and so on, so that, I think, is a 9 very conservative estimate. 10 BY MR. OLSON: 11 Q What's a conservative estimate? 12 A The numbers that are quoted. 13 Q About how -- 14 A \$15 versus 10. 15 Q Okay. So you -- in other words, it's 16 possible that housing costs were even going to be 17 more expensive than you estimated here as a result 18 of the guidelines? 19 MR. TAKENOUCHI: Objection -- 20 THE WITNESS: No, I think that's taken that 21 into consideration. I think that's what we're 22 talking about. 23 BY MR. OLSON: 24 Q I'm just trying to understand what you are 25 saying was conservative.</p>
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<p>1 constant. 2 BY MR. OLSON: 3 Q Now, this possibility of producers building 4 new complexes and housing is something that you 5 considered as well, in your work? 6 A Yes, that's the growth factor. 7 Q And one of the factors that you point out 8 here is that that type of -- or building new housing 9 was going to be more expensive? 10 MR. TAKENOUCHI: Objection; misstates the 11 document. 12 THE WITNESS: Does it actually say that? 13 BY MR. OLSON: 14 Q Well, do you see where you say in the next 15 sentence, "More expensive housing" -- 16 A I see it, I see it, yeah. 17 Q -- "(as a result of lower cage density) 18 should delay start-up decisions and financing"? 19 A Immediately if you build -- 20 MR. GODLSTEIN: Wait for him to finish the 21 question. 22 THE WITNESS: Excuse me. I thought he was 23 finished. 24 BY MR. OLSON: 25 Q I was.</p>	<p>1 A I think the \$15 is a conservative result of 2 what we're talking about. 3 Q Now, in order for the egg industry to 4 benefit as a whole from these guidelines, was there 5 any limit, in your view, on how many new housing 6 complexes should be built? 7 A Well, we have to keep up with the human 8 population in the United States. As the human 9 population goes up 1 percent a year, which is 10 3 million, theoretically you need 3 million more 11 chickens, just to keep the status quo. 12 Now, if the consumption of eggs goes down, 13 and, of course, those numbers are going to change. 14 You have to take into consideration the 15 increasing productivity of the chickens at the rate 16 of half a percent a year. Over that seven-year 17 period, you would be projecting another 3 1/2 18 percent production, and that's -- and that's a lot. 19 That's 10 million birds. 20 Q So, in other words, the egg industry, even 21 under the guidelines, might need to increase 22 production to some extent? 23 A If you look at the statistics that we 24 produce in our newsletter, you'll see that the layer 25 numbers in the United States have been very</p>

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<p>1 constant, very constant layer numbers. Now, 2 remember I told you productivity of each chicken has 3 changed -- 4 So all these factors, you've got the 5 consumers' reaction to newspaper clippings about 6 cholesterol or other factors, other health factors. 7 You have some disease epidemics that have occurred 8 that will scare people away from eating eggs. And 9 so, you know, there's multiple factors going on. 10 And all of these -- if we considered every single 11 one of them, the story might be totally different, 12 but you have to take a center position. 13 Q Well, I'd like to focus on this factor of 14 building new housing complexes. 15 A Yes. 16 Q Are you aware of efforts by UEP to persuade 17 its members not to overbuild as a result of the 18 increased space allowances under the guidelines? 19 MR. TAKENOUCHI: Objection; form. 20 THE WITNESS: There are several answers to 21 that question. Do you want them all? 22 BY MR. OLSON: 23 Q Yes. Let's start with the first one. 24 A One suggestion and recommendation to 25 members is that they don't build brand-new -- add on</p>	<p>1 for so many years and then they start to fall down. 2 So there is ongoing replacement of houses all the 3 time. 4 And when they have a requirement to have 80 5 percent of the population in any given house, the 6 new house will be designed with that in mind and it 7 will be a new hundred percent. It won't be an 80 8 percent, it will be a hundred percent of that new 9 house. 10 BY MR. OLSON: 11 Q Okay. So we were talking about your 12 knowledge of efforts by UEP to persuade its members 13 not to overbuild as a result of the increased space 14 allowances under the guidelines, and you just 15 identified one, but you indicated there were others. 16 A I -- 17 MR. TAKENOUCHI: Objection to form. 18 THE WITNESS: -- have no knowledge -- 19 MR. TAKENOUCHI: Mr. Bell, could you let me 20 finish the objection; please? 21 Objection to the form he's not identified 22 who at UEP is supposedly making these 23 recommendations. 24 THE WITNESS: I have no knowledge of 25 them -- to your specific question about building</p>
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<p>1 facilities to what they've already got and that they 2 buy someone else out. 3 Q And that was a suggestion and 4 recommendation made by UEP? 5 A UEP, right. 6 So the intent there is to try to stabilize 7 the bird numbers. Once you accomplish the stable 8 bird numbers, you don't want people going out there 9 and doubling their number of houses, do you? And -- 10 You have to say yes or no. He can't get 11 you -- you're nodding your head. 12 MR. GODLSTEIN: You can't ask him questions 13 unless it is to clarify something. 14 Go ahead. 15 THE WITNESS: Okay. Go ahead. That's 16 another one. 17 BY MR. OLSON: 18 Q Okay. So that was the first suggestion and 19 recommendation? 20 A Can I add on? 21 Q Sure. 22 MR. TAKENOUCHI: Objection; lacks 23 foundation. 24 THE WITNESS: Houses only last so long, and 25 equipment, and therefore, they are only efficient</p>	<p>1 houses. Their recommendations would be that we do 2 not -- do not grow in numbers of birds or 3 production. Those are two different things. 4 BY MR. OLSON: 5 Q Okay. And what do you recall about 6 caution -- or UEP cautioning its members not to grow 7 in numbers of birds or production? 8 MR. TAKENOUCHI: Objection to form. 9 THE WITNESS: Well, that's for my own 10 personal opinion -- viewpoint. The fact that they 11 send out my newsletter with my recommendations on 12 that means that they are in somewhat of an agreement 13 with what I'm saying. 14 BY MR. OLSON: 15 Q Because you personally cautioned against 16 producers growing in numbers of birds and 17 production? 18 A Yes. I cannot point to their actual 19 document. Maybe this kind of a newsletter here, it 20 would say something to that effect. But the add on, 21 which is my letter, certainly would, over time, say 22 that too many birds is detrimental. 23 Q And, specifically in the context of the 24 increased space allowances under the program, you 25 cautioned against reacting to that by growing the</p>

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<p>1 number of birds and production and cautioned against 2 doing that? 3 A The two are independent of one another. 4 Once you get to this lower number, and then you have 5 no recommendations, regulations or anything else 6 that keeps you from -- other than maintaining the 7 capacity of those houses, you have nothing that will 8 keep you from building the second house. And that's 9 what you're cautioning the industry not to do. 10 Q All right. Now let's look at page 4 of the 11 document in front of you. There is a heading that 12 says "Results" -- 13 A Okay. 14 Q -- and you're summing up some of your work 15 here. Have you had a chance to just briefly review 16 the "Results" section? 17 A You want me to read it? 18 Q Please. 19 A Okay. I've glanced through it. 20 Q All right. I want to make sure that we 21 understand this. 22 So you are modeling the effect here -- or 23 you're reporting possible outcomes from the effect 24 of the cage space guidelines, right? 25 MR. TAKENOUCHI: Objection; misstates the</p>	<p>1 even with 50 percent compliance and at a 10 percent 2 sustained growth rate, the nation's flock in 2009 3 would still be smaller than it was today? 4 A Yes. 5 Q So you had maybe an aggressive assumption 6 and a conservative assumption there showing a range? 7 A I would have tried to bracket the possible 8 conditions, yes. 9 Q All right. And when you say in number 6, 10 "total industry farm egg income," subtracting -- and 11 you subtract 35 cents per dozen. 12 Do you see that? 13 A I see that. 14 Q Why are you subtracting 35 cents per dozen? 15 A I'm not sure I know. 16 Q Fair enough. In your "Comments" section at 17 the bottom -- 18 A Yes. 19 Q -- you say, "We don't expect everyone to 20 believe the precise numbers that are listed in the 21 tables, but the general directions should be of 22 interest to everyone in table-egg production." 23 Do you see that? 24 A Yes, sir. 25 Q Why did you believe the general direction</p>
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<p>1 document. 2 THE WITNESS: Partially. 3 BY MR. OLSON: 4 Q Yeah. And you have a couple different ways 5 of looking at it. One is the results, if there was 6 100 percent compliance and no growth? 7 A Yes. 8 Q And then you also look at 50 percent 9 compliance and 10 percent sustained growth rate. 10 Those are basically the two ways you look at it 11 here, right? 12 A I assume you're correct. I haven't read it 13 in detail. 14 Q Well, just what you report here in the 15 "Results" section? 16 A Okay. Well, you'll have to show the 17 specific sentence you are talking about. 18 Are you in "Results"? Which item? 19 Q Okay. So number 1 says with a hundred 20 percent compliance and no growth, right? 21 A Uh-huh. 22 Q You estimated that chicks hatched in 2009 23 would be down over 26 percent, correct? 24 A Yes, sir. 25 Q And then if you look at number 4 you say</p>	<p>1 would be of interest? 2 A Well, this is always -- there is always a 3 disclaimer in most everything we write. So you 4 don't want to say this is a black-and-white 5 situation, so you do use a disclaimer statement. 6 But in looking at different scenarios, the 7 direction is what's important. It's -- is it a 8 factual direction, and I believe it was, I believe 9 it is. 10 Q And what's the direction that you're 11 reporting here? 12 A Well, we're basically, once again, talking 13 about the egg numbers or bird numbers and price, and 14 so we're talking about the gross income of the 15 industry here in item 7, or whatever. So we're 16 looking at multiplying bird numbers, times 17 productivity, times price, holding, we'll say, feed 18 price constant, so you can look at the effective 19 income. And you can run your models through 20 different scenarios, that's what we've done, and 21 saying, well, the general direction is with 22 reduction of bird numbers, income of industry will 23 rise. 24 Q And the direction is the more producers 25 that participate --</p>

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<p>1 A That's part of it.</p> <p>2 Q Let me just finish this one.</p> <p>3 And the direction is the more producers</p> <p>4 that participate, the better prices and the better</p> <p>5 profits for all producers?</p> <p>6 A I would say that's a generally true</p> <p>7 statement, but it still goes back to eggs, total</p> <p>8 eggs, whether there are more producers, that may or</p> <p>9 may not be the case.</p> <p>10 As you know, we have this tremendous</p> <p>11 concentration. If we have one more large farm, that</p> <p>12 affects the price of all eggs in the United States.</p> <p>13 Q With that caveat noted, the direction</p> <p>14 you're referring to here is the more participation,</p> <p>15 the better for everyone?</p> <p>16 A Well, the fewer eggs you produce, the</p> <p>17 better it is for everyone. Participation -- let's</p> <p>18 just say you have 95 percent participation and they</p> <p>19 were all tiny little farms. That wouldn't --</p> <p>20 Q Okay.</p> <p>21 A -- accomplish much.</p> <p>22 Q But if you measure participation in terms</p> <p>23 of -- and I take it this was your point, so I'll</p> <p>24 start again.</p> <p>25 If you measure participation in terms of</p>	<p>1 a dozen, that's what they were when they had this</p> <p>2 disease problem. That's totally unpredictable. No</p> <p>3 one would have predicted that, and it's the same</p> <p>4 thing with when our feed prices double, no one would</p> <p>5 have predicted that would have happened or the</p> <p>6 results, just the general.</p> <p>7 Q We'll circle back to that, but just so your</p> <p>8 testimony is clear, the direction that you were</p> <p>9 saying in July of 2002 that should be of interest to</p> <p>10 everyone is that the more eggs that are produced</p> <p>11 under the UEP program, the better prices for the</p> <p>12 industry as a whole?</p> <p>13 A The fewer eggs, not the more. You said</p> <p>14 "more."</p> <p>15 Q The higher percentage of eggs that are</p> <p>16 subject to the program.</p> <p>17 A That makes fewer eggs.</p> <p>18 Q Right.</p> <p>19 A Okay. You didn't say that.</p> <p>20 Q All right. So the higher percentage of</p> <p>21 eggs that are subject to the program, the better</p> <p>22 prices and profits for all producers?</p> <p>23 A Yes.</p> <p>24 Q You can set that aside.</p> <p>25 Before I hand you this document, you</p>
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<p>1 eggs --</p> <p>2 A Yes.</p> <p>3 Q -- the more producers -- the more eggs that</p> <p>4 are produced under the program --</p> <p>5 A Yes.</p> <p>6 Q -- the more -- the better prices and the</p> <p>7 better profits for all producers?</p> <p>8 MR. TAKENOUCHI: Objection to form,</p> <p>9 misstates prior testimony.</p> <p>10 THE WITNESS: Yes, but I'd like to add to</p> <p>11 that.</p> <p>12 BY MR. OLSON:</p> <p>13 Q Sure.</p> <p>14 A Okay. There's only so much history</p> <p>15 involving extremely high egg prices or high egg</p> <p>16 prices, period, so the analyses have to deal with</p> <p>17 history.</p> <p>18 And history says that, within a range,</p> <p>19 these events are related.</p> <p>20 When you go to conditions like we have</p> <p>21 today, and we have totally different cost structure,</p> <p>22 totally different price structure and you have</p> <p>23 nothing to predict it on.</p> <p>24 It's just like I read the other day that</p> <p>25 Mexico prices of eggs were 80 -- no, \$2.00 -- \$8.00</p>	<p>1 testified yesterday that you would generally receive</p> <p>2 Gene Gregory's United Voices publication. Would,</p> <p>3 from time to time, you review editorials by Gene</p> <p>4 Gregory that he wrote on these topics?</p> <p>5 A Yes.</p> <p>6 (Deposition Exhibit 17 was marked for</p> <p>7 identification by the court reporter</p> <p>8 and is attached hereto.)</p> <p>9 BY MR. OLSON:</p> <p>10 Q Let me hand you what we marked Bell 17.</p> <p>11 And I'm only going to ask you to look at a</p> <p>12 portion of this, which is towards where you are. It</p> <p>13 is towards the back.</p> <p>14 MR. TAKENOUCHI: Can we have the Bates</p> <p>15 number, please?</p> <p>16 BY MR. OLSON:</p> <p>17 Q And it's -- the heading is, "Reason Why</p> <p>18 Industry Could Have Period of Profitability.</p> <p>19 Editorial By: Gene Gregory."</p> <p>20 A Yes.</p> <p>21 Q And the Bates number --</p> <p>22 A Go ahead.</p> <p>23 Q You can start looking at it while I read</p> <p>24 this.</p> <p>25 The Bates number is CM00430620 through</p>

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<p>1 -633.</p> <p>2 So why don't you just briefly skim that</p> <p>3 editorial and let me know when you're done, and then</p> <p>4 later if you want to read it in more depth, you can.</p> <p>5 A All right.</p> <p>6 Q All right. Now, do you recall, after</p> <p>7 looking at this, whether you've seen this editorial</p> <p>8 before?</p> <p>9 A Having read this editorial?</p> <p>10 Q Yes.</p> <p>11 A I would do it automatically.</p> <p>12 Q Okay. So -- okay.</p> <p>13 Now, in this editorial Mr. Gregory is</p> <p>14 referring to the fact that egg prices have reached</p> <p>15 very high levels.</p> <p>16 A And the date is 2003?</p> <p>17 Q August of 2003.</p> <p>18 A August. Okay.</p> <p>19 Q Do you see that?</p> <p>20 A I see it.</p> <p>21 Q And is that consistent with your knowledge?</p> <p>22 MR. TAKENOUCHI: Objection to foundation.</p> <p>23 It's not clear he's testifying he's actually read</p> <p>24 this particular editorial.</p> <p>25 MR. OLSON: All right. Thank you. We</p>	<p>1 Q That's fine. Let's put that aside.</p> <p>2 All right. If you look at the paragraph in</p> <p>3 the middle of this page, it says, "UEP's Animal</p> <p>4 Husbandry Guidelines."</p> <p>5 A Yes.</p> <p>6 Q And in there Mr. Gregory writes, "the fact</p> <p>7 that approximately 200 companies have begun</p> <p>8 implementing the program, this has caused a flock</p> <p>9 production and will continue to do so for some</p> <p>10 time."</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And then in the next paragraph do you see</p> <p>14 where he says, "The hatch reduction to meet the</p> <p>15 Animal Husbandry Guidelines began with chicks</p> <p>16 hatched after April 1, 2002"?</p> <p>17 A Yes.</p> <p>18 Q Now based -- to your knowledge, is there a</p> <p>19 relevant distinction between flock reduction and a</p> <p>20 hatch reduction in this context?</p> <p>21 A They should be -- they should be</p> <p>22 correlated.</p> <p>23 Remember there is a six-year -- five- to</p> <p>24 six-month delay when one occurs and the other --</p> <p>25 they become hens.</p>
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<p>1 don't need speaking objections.</p> <p>2 THE WITNESS: I can never recall the price</p> <p>3 of eggs three months ago.</p> <p>4 BY MR. OLSON:</p> <p>5 Q All right. Fair enough.</p> <p>6 In any case, just to orient ourselves, it</p> <p>7 appears in August 2003 eggs prices have --</p> <p>8 A And, of course, that's the summertime, and</p> <p>9 summertime is usually the lowest price for the year.</p> <p>10 Q Right. And, in fact, Mr. Gregory reports</p> <p>11 the Urner Barry quote had reached a level in the</p> <p>12 summer of 2003 that had never previously been</p> <p>13 recorded.</p> <p>14 Do you see that right at the very</p> <p>15 beginning?</p> <p>16 A That's -- well, he had a quote of a dollar.</p> <p>17 Urner Barry quoted, not what the producer gets, by</p> <p>18 any means. It's a benchmark.</p> <p>19 So if he's comparing apples and apples, and</p> <p>20 then I guess he's made -- he's researched the</p> <p>21 subject.</p> <p>22 I would have my own data on the monthly egg</p> <p>23 prices that I maintain, and I could go back and</p> <p>24 verify it if you want me to. I didn't make any</p> <p>25 attempt to verify it.</p>	<p>1 I think I indicated yesterday the hatch</p> <p>2 used to be a very important indicator of what's</p> <p>3 going to happen in the future.</p> <p>4 I report the hatch every month. It comes</p> <p>5 in the United States Department of Agriculture</p> <p>6 figures.</p> <p>7 In most cases I believe their numbers, but</p> <p>8 some things they are a little weak on.</p> <p>9 Q All right. So -- but would it be fair to</p> <p>10 say the cage space guidelines were expected to lead</p> <p>11 to both a flock reduction and a hatch reduction?</p> <p>12 A Not necessarily a hatch reduction, but the</p> <p>13 objective of reducing the flock size would affect</p> <p>14 the total number of eggs that are laid.</p> <p>15 As far as affecting hatch, the hatch goes</p> <p>16 up and down as a result of the failure to make</p> <p>17 enough earnings.</p> <p>18 And you want to cut that back in the</p> <p>19 future. I can't afford my chicks today, so I don't</p> <p>20 hatch them.</p> <p>21 Q All right. I want to focus on one point</p> <p>22 here where, at the top of the next page, the one</p> <p>23 that ends in -631 --</p> <p>24 A Okay.</p> <p>25 Q This is just a preliminary question. Do</p>

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<p>1 you see in the first couple of paragraphs there</p> <p>2 Mr. Gregory is making the point that to the extent</p> <p>3 the industry needs to build new facilities --</p> <p>4 A Let's see --</p> <p>5 Q -- that it should only be done to replace</p> <p>6 the loss reduction?</p> <p>7 A In the first three paragraphs someplace?</p> <p>8 MR. GODLSTEIN: Are you starting from the</p> <p>9 bottom of the page?</p> <p>10 MR. OLSON: Well, hold on. Hold on.</p> <p>11 Q All right. Let's try it this way. In the</p> <p>12 middle of the page Mr. Gregory says, "Two companies</p> <p>13 have recently provided UEP with performance of</p> <p>14 farms. We have attempted to use this as a model to</p> <p>15 calculate how many hens we need to replace the low</p> <p>16 reduction."</p> <p>17 A Yes.</p> <p>18 Q Do you know if you worked on that model?</p> <p>19 A Did I?</p> <p>20 Q Yes.</p> <p>21 A I don't believe so. I think this is --</p> <p>22 they named the company, didn't they?</p> <p>23 Q Well, if you look two pages, it is the last</p> <p>24 page in the document, it ends in -633?</p> <p>25 A Yes.</p>	<p>1 Q Let me hand you what we marked Bell 18.</p> <p>2 A Okay. "High Egg Prices and Molting."</p> <p>3 Go ahead.</p> <p>4 Q And this is a document Bates-stamped</p> <p>5 BELL002761 through -2763.</p> <p>6 And can you identify this, Mr. Bell, as one</p> <p>7 of the memos you wrote under the sponsorship of UEP</p> <p>8 dated December 10th, 2003?</p> <p>9 A Yes, sir.</p> <p>10 Q It's titled, "High Egg Prices and Molting</p> <p>11 How Egg Prices Affect the Decision to Molt," right?</p> <p>12 A Yes.</p> <p>13 Q Now, from the first sentence of your memo</p> <p>14 you're indicating that based on the data that you</p> <p>15 looked at, the industry, by the end of 2003, was</p> <p>16 experiencing some of the highest producer egg prices</p> <p>17 in history, right?</p> <p>18 A That's what it says, yes.</p> <p>19 Q And then in the document you look at how</p> <p>20 that affects decisions, the economics of the</p> <p>21 decision of a producer to molt?</p> <p>22 A Yes.</p> <p>23 Q And if you look at page 2 at the end of the</p> <p>24 second paragraph from the top, you write, "Obviously</p> <p>25 current egg price levels do not justify molting."</p>
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<p>1 Q There is this model for replacement of loss</p> <p>2 production.</p> <p>3 A Well, if he had developed it, then I didn't</p> <p>4 develop it.</p> <p>5 Q Just my question is, looking at this, do</p> <p>6 you know if that's something that you worked on?</p> <p>7 A Well --</p> <p>8 MR. GODLSTEIN: See the model?</p> <p>9 THE WITNESS: This model down here?</p> <p>10 MR. GOLDSTEIN: Yes.</p> <p>11 BY MR. OLSON:</p> <p>12 Q Right.</p> <p>13 A I think he's basing that on gathering data</p> <p>14 from two of his cooperating farms, and I don't do</p> <p>15 that. I based it on larger samples of the entire</p> <p>16 nation or all of California, or whatever it is. I</p> <p>17 don't just take two farms and say that it means</p> <p>18 anything.</p> <p>19 BY MR. OLSON:</p> <p>20 Q Okay. You can put that aside. I just</p> <p>21 wanted to know if you've worked on that model.</p> <p>22 (Deposition Exhibit 18 was marked for</p> <p>23 identification by the court reporter</p> <p>24 and is attached hereto.)</p> <p>25 BY MR. OLSON:</p>	<p>1 Do you see that?</p> <p>2 A When it underlines "current" -- what does</p> <p>3 it say about current? -- it underlines the word</p> <p>4 "current"?</p> <p>5 Q Right.</p> <p>6 A So it says -- the other statement is</p> <p>7 relative to general prices and so on.</p> <p>8 The current says that the relationship at</p> <p>9 this moment is that you shouldn't molt, right, "do</p> <p>10 not justify molting."</p> <p>11 So if you look at all of the possibilities</p> <p>12 of molting price there is a relationship, but you</p> <p>13 can go too far and you don't go far enough.</p> <p>14 Individual companies can make a lot more</p> <p>15 money molting, other companies can make a lot more</p> <p>16 money not molting and so you can condemn it -- I</p> <p>17 think we had another document that some of the</p> <p>18 members were condemning it, per se. Well, that's</p> <p>19 just not --</p> <p>20 Q But from the point of view of economics,</p> <p>21 the point you make here is that, in general, molting</p> <p>22 appears to be justified only under low margin</p> <p>23 combinations of low egg prices and high pullet</p> <p>24 prices?</p> <p>25 A Did I say "only"?</p>

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<p>1 Q Do you see where you say, "In general, 2 molting appears to be just identified only under low 3 margin combinations of low prices and high" -- 4 A I did say "only," yeah. 5 Q And that was your view at the time? 6 A Obviously, yes. 7 Q And the point you're making here is under 8 these very high egg prices -- 9 A These are not high egg prices. 10 Q Well, you referred to them as the 11 highest -- 12 A I mean compared to today. 13 Q Okay. Well, let's just talk -- in late 14 2003 the where egg prices were the highest in 15 history, the point you're making here is you no 16 longer justify molting as an economic matter; is 17 that right? 18 A I don't think so. 19 MR. TAKENOUCHI: Objection to form, 20 misstates prior testimony. 21 THE WITNESS: I'll have to read it a third 22 time and make sure I'm understanding you -- "appears 23 to be justified" -- 24 MR. GODLSTEIN: I don't think your answer 25 got on the record.</p>	<p>1 So in my thinking when we have 40 percent 2 of our years are below cost, we're selling eggs to 3 our buyers below cost 40 -- 40 percent of the time, 4 then what -- how are we supposed to determine what 5 we're going to do with the next flock about molting? 6 It is not a matter of the next flock, it is a matter 7 of the company's policy. The company's policy is to 8 molt or not to molt. And you can't look at just ups 9 and downs of a moment in time. 10 So it's -- I don't know. I don't see that 11 I've done anything wrong. 12 BY MR. OLSON: 13 Q Oh, no, I don't mean to suggest you did 14 anything wrong. I was just -- these questions are 15 just to make sure we're understanding what was being 16 said here. 17 A Have I explained it? 18 Q Well, what you're saying here is that in 19 light of the current egg price levels, molting was 20 not economically justified? 21 MR. TAKENOUCHI: Objection to form. 22 THE WITNESS: I would have to know what the 23 current egg price was at the time, because, like I 24 say, in general, molting is done during low margin 25 periods -- pardon me, that's not a good statement.</p>
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<p>1 Did you hear him say "I don't think so"? 2 You have to speak up. 3 THE WITNESS: I don't think so. 4 BY MR. OLSON: 5 Q Let's just try the question again so we 6 can -- so the point you're making here is that as an 7 economic matter, in general, molting appears to be 8 justified only under low margin combinations of low 9 egg prices and high pullet prices, right? 10 MR. TAKENOUCHI: Objection to form, 11 misstates prior testimony. 12 THE WITNESS: Well, the question of 13 "appears" means with the evidence that we have 14 available in front of us, which this is a 15 newsletter, it appears that way. I'm making a case 16 for that it doesn't apply to everybody, it doesn't 17 apply to every set of high prices and low prices and 18 costs and income and so on. 19 The title of the entire paper has to do 20 with high egg prices and molting. Well, they are 21 experiencing high egg prices apparently at this 22 time. People are questioning should we be molting, 23 and we are talking about generalities that the 24 molting is primarily a benefit under low-profit 25 situations or no-profit situations.</p>	<p>1 It's more justifiable under low margin periods. 2 In California it's always been the thing to 3 do, and everybody did it. And it started in 4 Washington state where they did it every flock once 5 or twice, once or twice molting. 6 California followed into it. And now there 7 are parts of the country, New England, for example, 8 nobody molts. 9 BY MR. OLSON: 10 Q Okay. You can put that aside. 11 (Deposition Exhibit 19 was marked for 12 identification by the court reporter 13 and is attached hereto.) 14 MR. OLSON: I've handed you what we've 15 marked Bell 19. 16 MR. GODLSTEIN: Before we start with Bell 17 19, why don't we take a break. 18 MR. OLSON: Okay. 19 THE VIDEOGRAPHER: The time is 20 approximately 11:03 a.m., and we're going off the 21 record. 22 (Recess.) 23 THE VIDEOGRAPHER: The time is 24 approximately 11:19 a.m., and we're back on the 25 record.</p>

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<p style="text-align: right;">216</p> <p>1 BY MR. OLSON:</p> <p>2 Q All right, Mr. Bell, we're looking at Bell</p> <p>3 Exhibit 19. Can you identify this as an e-mail you</p> <p>4 sent to Al Pope and Gene Gregory on March 24th, 2004</p> <p>5 with an attachment that's one of your memos.</p> <p>6 MR. TAKENOUCHI: Can we get a Bates number?</p> <p>7 MR. OLSON: UE00088125 through -127.</p> <p>8 Q And do you recall preparing this memo?</p> <p>9 A Yes.</p> <p>10 Q Do you recall discussing it with Al Pope</p> <p>11 and Gene Gregory?</p> <p>12 A Only in e-mail form.</p> <p>13 Q Do you recall discussions other than what</p> <p>14 we're looking at here in Bell 19?</p> <p>15 A About this same subject?</p> <p>16 Q Right.</p> <p>17 A About this newsletter?</p> <p>18 Q Right.</p> <p>19 A No, I don't recall any discussion about it,</p> <p>20 except for the e-mail.</p> <p>21 Q Okay. Fair enough. So let's look at the</p> <p>22 memo. And it is dated March 1, 2004, and it's</p> <p>23 titled, "What a Difference a Year Makes," and it is</p> <p>24 one you prepared, correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">218</p> <p>1 Q The improved egg price led to --</p> <p>2 A Yes.</p> <p>3 Q -- an improvement in revenue of a billion</p> <p>4 dollars or more?</p> <p>5 A Yes.</p> <p>6 Q And as far as the reasons for those</p> <p>7 improved prices, you identify various factors,</p> <p>8 including that the industry successfully held hen</p> <p>9 numbers down, right?</p> <p>10 MR. TAKENOUCHI: Objection to form.</p> <p>11 THE WITNESS: In Dallas it shows a very</p> <p>12 small up to your appearance reduction in bird</p> <p>13 numbers and a considerable elevation in price, and</p> <p>14 that's the concept of a ratio of a production change</p> <p>15 to price that we talked about earlier.</p> <p>16 BY MR. OLSON:</p> <p>17 Q And one thing that you observed during this</p> <p>18 period is that the industry had successfully held</p> <p>19 hen numbers down, correct?</p> <p>20 A That's what the statement says, yes.</p> <p>21 Q And that no increases in production had</p> <p>22 been made to compensate for a larger human</p> <p>23 population?</p> <p>24 A Right, that would have taken another</p> <p>25 3 million, as I indicated earlier, annually.</p>
<p style="text-align: right;">217</p> <p>1 Q When you say "What a Difference a Year</p> <p>2 Makes," you're referring to, at least in part, the</p> <p>3 prices that were at favorable levels at the time?</p> <p>4 A I would say I was looking at total margin,</p> <p>5 total net income. That's the number we're quoting</p> <p>6 here.</p> <p>7 Q When you say "net income," that means</p> <p>8 profits?</p> <p>9 A Good question. It would be income minus</p> <p>10 costs.</p> <p>11 Q Okay.</p> <p>12 A But not taxes or anything of that.</p> <p>13 Q But for a layperson sometimes that's</p> <p>14 just --</p> <p>15 A I think you're okay.</p> <p>16 Q -- it is just referred to as profits?</p> <p>17 And what you report here is over the course</p> <p>18 of the year, the conditions in the industry that</p> <p>19 prevailed led to an improvement in industry revenue</p> <p>20 of \$1 billion or more?</p> <p>21 MR. TAKENOUCHI: Objection to form.</p> <p>22 BY MR. OLSON:</p> <p>23 Q Is that right?</p> <p>24 A That's conclusions. The table indicates it</p> <p>25 is mostly egg price was the reason.</p>	<p style="text-align: right;">219</p> <p>1 Q And those results were consistent with your</p> <p>2 expectations of the results of the cage space</p> <p>3 program being implemented?</p> <p>4 MR. TAKENOUCHI: Objection to form,</p> <p>5 misstates prior testimony.</p> <p>6 BY MR. OLSON:</p> <p>7 Q Is that right?</p> <p>8 A Would you restate it?</p> <p>9 Q Yes. Those results about hen numbers and</p> <p>10 production, were those consistent with your</p> <p>11 expectations about the implementation of the</p> <p>12 increased cage space allowance guidelines?</p> <p>13 MR. TAKENOUCHI: Objection; form, misstates</p> <p>14 prior testimony.</p> <p>15 THE WITNESS: I don't think I state that in</p> <p>16 the letter itself. I say there are many theories</p> <p>17 why prices exceeded everyone's expectations, but we</p> <p>18 believe they were affected by a combination of</p> <p>19 supply and demand, circumstances that elevated</p> <p>20 prices beyond historical experience, so I don't</p> <p>21 think I can agree with your premise.</p> <p>22 BY MR. OLSON:</p> <p>23 Q But putting aside what's stated in the</p> <p>24 document, your expectation, based on the work you've</p> <p>25 done, was that the implementation of the cage space</p>

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<p style="text-align: right;">220</p> <p>1 guidelines was going to affect supply in a manner</p> <p>2 consistent with what's reported here?</p> <p>3 A We -- in other -- in other reports that</p> <p>4 we've already discussed, that would be the</p> <p>5 relationship that we would expect.</p> <p>6 Q All right. You can put that aside.</p> <p>7 (Deposition Exhibit 20 was marked for</p> <p>8 identification by the court reporter</p> <p>9 and is attached hereto.)</p> <p>10 BY MR. OLSON:</p> <p>11 Q Let me hand you what we've marked Bell 20.</p> <p>12 This is Bates-stamped BELL-D-0028600 through -28605.</p> <p>13 And, Mr. Bell, can you identify this as a</p> <p>14 memo that you wrote dated July 23, 2004 and titled,</p> <p>15 "Arguments For and Against Back Filling Table Egg</p> <p>16 Layer Flocks"?</p> <p>17 A Yes.</p> <p>18 Q Now, we've seen in some other memos that</p> <p>19 you say that Gene Gregory had asked you to look at</p> <p>20 the subject of the memo. Do you recall whether</p> <p>21 Mr. Gregory asked you to look at backfilling?</p> <p>22 A I --</p> <p>23 MR. TAKENOUCHI: Objection to form.</p> <p>24 THE WITNESS: I have a feeling that he</p> <p>25 asked me to write this one, because I don't usually</p>	<p style="text-align: right;">222</p> <p>1 these preliminary questions going back to</p> <p>2 Mr. Gregory's interest in this, and you referred to</p> <p>3 Mr. Gregory being concerned with anything that</p> <p>4 diluted the effects of the cage density policies.</p> <p>5 A Yes.</p> <p>6 Q Just to refocus on that for a moment, my</p> <p>7 question was, were you aware of a concern by</p> <p>8 Mr. Gregory at this time that backfilling was a</p> <p>9 loophole of sorts in those cage density policies?</p> <p>10 MR. TAKENOUCHI: Objection; lack of</p> <p>11 personal knowledge.</p> <p>12 THE WITNESS: The recommendations of UEP</p> <p>13 and the agreements that people made relative to</p> <p>14 density were for a maximum number of birds.</p> <p>15 If a person had normal mortality versus a</p> <p>16 catastrophic mortality, there's two different</p> <p>17 thoughts about backfilling.</p> <p>18 If your house is only -- if you're only</p> <p>19 allowed 80 percent of your original, you originally</p> <p>20 had 100 percent, now 80, and you lost half of them</p> <p>21 due to a catastrophic emergency, then he would make</p> <p>22 a very big claim to somebody to replace those</p> <p>23 missing birds, because they are going to be missing</p> <p>24 for one or two years. That's the whole concept.</p> <p>25 So you have people that are having</p>
<p style="text-align: right;">221</p> <p>1 use the word "backfilling." I think that's more of</p> <p>2 an industry word than one I would use.</p> <p>3 BY MR. OLSON:</p> <p>4 Q And do you recall at this time that</p> <p>5 backfilling was something that Gregory was concerned</p> <p>6 about?</p> <p>7 A He would be concerned with anything that</p> <p>8 diluted the effects of their cage density policies.</p> <p>9 Q And would it be fair to say that there was</p> <p>10 some concern by Mr. Gregory and others at this time</p> <p>11 that backfilling was a loophole of sorts in those</p> <p>12 cage density policies?</p> <p>13 A I personally would be opposed to</p> <p>14 backfilling, more from a social, chicken social, and</p> <p>15 from a disease potential. Historically, we never</p> <p>16 recommend backfilling.</p> <p>17 Also from identification of a flock, we</p> <p>18 lose total identification when we mix birds from</p> <p>19 other flocks. And I depend very heavily on flock</p> <p>20 identity and flock performance in all of our</p> <p>21 studies, model building, and so on.</p> <p>22 So this, I'm pretty sure, I was asked to</p> <p>23 talk about this, and I hope -- I haven't reread it</p> <p>24 today, but I hope it was fair to both sides.</p> <p>25 Q Well -- and we'll get to that. But just as</p>	<p style="text-align: right;">223</p> <p>1 excessive mortality. And what I mean by "excessive</p> <p>2 mortality," it would be, say, from 10 points -- .1</p> <p>3 percent a week to 40 or 50, and so that's a four- to</p> <p>4 fivefold difference in mortality.</p> <p>5 So it's an offer from the system to the</p> <p>6 individual members who need to do this, who need to</p> <p>7 do this because it reduces their hen numbers way</p> <p>8 more than normal.</p> <p>9 BY MR. OLSON:</p> <p>10 Q Okay. Let's put aside the issue of</p> <p>11 excessive mortality.</p> <p>12 A Okay.</p> <p>13 Q Putting aside that issue, were you aware of</p> <p>14 a concern at this time in 2004 that the use of</p> <p>15 backfilling in cases of normal mortality was</p> <p>16 undercutting the purposes of the cage density</p> <p>17 guidelines?</p> <p>18 MR. TAKENOUCHI: Objection to form.</p> <p>19 THE WITNESS: Any backfilling would</p> <p>20 increase the population and would defeat the</p> <p>21 original effect of reducing the profitability.</p> <p>22 BY MR. OLSON:</p> <p>23 Q And that was a concern that Mr. Gregory had</p> <p>24 at this time, was it --</p> <p>25 MR. TAKENOUCHI: Objection to form.</p>

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<p style="text-align: right;">224</p> <p>1 MR. OLSON: Strike that.</p> <p>2 Q Was that a concern that Mr. Gregory had at</p> <p>3 this time, to your knowledge?</p> <p>4 A He would have been confronted with -- from</p> <p>5 individual members that this is a concern to me as</p> <p>6 an individual member, and if there is enough of</p> <p>7 that, then it is a concern to UEP as well. And if</p> <p>8 there is enough concern to that, then he would turn</p> <p>9 it over to somebody else.</p> <p>10 These are my pros and cons, my advantages,</p> <p>11 my disadvantages, as I perceive them, but there are</p> <p>12 undoubtedly others.</p> <p>13 Q If you look at just -- I think to get to</p> <p>14 your summary here, if you look at the sentence at</p> <p>15 the bottom of page 3 that's cut off there, it starts</p> <p>16 with, "If enough producers adopt the practice of" --</p> <p>17 and then it continues on to the next page</p> <p>18 "backfilling, we would be faced with an additional 2</p> <p>19 to 2.5 percent laying hens and a resultant egg price</p> <p>20 depression of 10 percent or 5 to 6 cents per dozen</p> <p>21 (or more)."</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q And was that a concern that you had at this</p> <p>25 time, that the practice of backfilling could lead to</p>	<p style="text-align: right;">226</p> <p>1 MR. TAKENOUCHI: Objection; asked and</p> <p>2 answered.</p> <p>3 THE WITNESS: He asked me to give a</p> <p>4 two-sided viewpoint in the first place. So he was</p> <p>5 concerned, enough of his people were concerned, that</p> <p>6 they should address it. And he didn't feel like he</p> <p>7 was capable of doing it himself and I was available,</p> <p>8 and so he, undoubtedly, asked me to give it some</p> <p>9 thought.</p> <p>10 BY MR. OLSON:</p> <p>11 Q All right. And then you attach, as you'll</p> <p>12 see on page 5, an article entitled, "Potential</p> <p>13 Health Risks of Backfilling at Molt."</p> <p>14 Do you see that?</p> <p>15 A Yes.</p> <p>16 Q By Kenton Kreager of Hy-Line International?</p> <p>17 A Yes.</p> <p>18 Q What is Hy-Line International?</p> <p>19 A Yes.</p> <p>20 Q What is Hy-Line International?</p> <p>21 A It is the largest producer of baby chicks.</p> <p>22 Q So it's an egg producer?</p> <p>23 MR. TAKENOUCHI: No --</p> <p>24 BY MR. OLSON:</p> <p>25 Q Oh, chick producer?</p>
<p style="text-align: right;">225</p> <p>1 that?</p> <p>2 A After he asked me to give some thought to</p> <p>3 this subject, and this -- a paper like this might</p> <p>4 take me a day's worth of thought, as opposed to five</p> <p>5 minutes here, but that's my conclusions about that</p> <p>6 one issue of the backfilling.</p> <p>7 Q And that raised concerns for you?</p> <p>8 A Well, that's a significant amount of money.</p> <p>9 Q And you then, in bold, underlined --</p> <p>10 basically cautioned individual producers not to</p> <p>11 engage in that practice, right?</p> <p>12 A Yes. I'm concerned about multiple small</p> <p>13 amounts giving us a large amount. And if you just</p> <p>14 look at one little thing and say that it only</p> <p>15 affects the industry by a penny a hen, well, you</p> <p>16 multiply that by almost 300,000 -- 300 million, and</p> <p>17 then you are talking about the real money. But if</p> <p>18 you are also relating it to the profitability of the</p> <p>19 industry where you're talking about maybe 25 to 50</p> <p>20 cents, well, 1 cent a hen is several percentage</p> <p>21 points.</p> <p>22 Q And do you recall whether at this time</p> <p>23 Mr. Gregory shared your concern that the use of</p> <p>24 backfilling in the industry could hurt the</p> <p>25 industry's profitability?</p>	<p style="text-align: right;">227</p> <p>1 A Chick producer.</p> <p>2 Q And do you see at the bottom Mr. Kreager,</p> <p>3 the bottom paragraphs says, "Transfers of back-fill</p> <p>4 hens from within the same complex should be safe, as</p> <p>5 all houses within a complex are usually of the same</p> <p>6 vaccination history and exposure."</p> <p>7 Do you see that?</p> <p>8 A Yes, I see that.</p> <p>9 Q Was that consistent with your knowledge?</p> <p>10 A Say it again.</p> <p>11 Q Was that consistent with your knowledge?</p> <p>12 MR. TAKENOUCHI: Objection to form.</p> <p>13 THE WITNESS: I would not be -- he's a</p> <p>14 veterinarian, by the way, so he's a doctor.</p> <p>15 I feel highly that he's a very experienced</p> <p>16 person, and he visits many, many more farms than I</p> <p>17 do and gets involved in their individual problems.</p> <p>18 I would have been more strongly -- I</p> <p>19 wouldn't have said the same vaccination history</p> <p>20 between houses, maybe similar, but not the same.</p> <p>21 Most companies have a vaccination policy, but it</p> <p>22 does change over time.</p> <p>23 The chickens on a given farm at any point</p> <p>24 in time in a complex -- the definition of a complex</p> <p>25 is multiple ages and there may be eight to ten</p>

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<p>1 different houses, eight to ten different ages and 2 they are -- that's also a two-year span. 3 So what's being recommended today has not 4 been recommended two years ago. 5 BY MR. OLSON: 6 Q All right. Thank you. You can put that 7 aside. 8 (Deposition Exhibit 21 was marked for 9 identification by the court reporter 10 and is attached hereto.) 11 BY MR. OLSON: 12 Q I'm handing you what's been marked Bell 21. 13 I'm going to have to get the Bates stamp of 14 this document. 15 It is UE0153245 through -246. 16 Mr. Bell, can you identify this as the 17 minutes of a shell egg marketing committee meeting 18 in October 20th, 2004 that you attended? 19 A Yes. 20 Q And do you recall why you attended this 21 meeting? 22 A This was nine years ago; is that right? 23 Nine years ago. I made presentations at three or 24 four or five of their annual meetings. I would have 25 to go back in my diary and figure out what the</p>	<p>1 also, and he and I correspond quite a bit because we 2 do have common interest. 3 He reported the Chilson report, Chilson is 4 an accounting firm that, at that time, was heavily 5 used in the industry and he had a lot of company 6 data across the country. All that was treated 7 confidentially between companies. 8 "Gregory presented further reports and 9 pleaded with the attendees to take care of business 10 by reducing their flock age" -- 11 MR. TAKENOUCHI: Just for the record, it 12 seems like Mr. Bell -- 13 MR. OLSON: Please, do not interrupt the 14 witness. 15 MR. TAKENOUCHI: Well, there is no question 16 here. 17 MR. OLSON: Okay. But what are you doing 18 speaking? 19 MR. TAKENOUCHI: Objection; there is no 20 question pending. 21 MR. OLSON: You're going to object in the 22 middle of him talking? 23 THE WITNESS: I thought I was supposed to 24 go over what it says. 25 BY MR. OLSON:</p>
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<p>1 subject was. I don't see it listed here. 2 Q You know, Mr. Bell, if I ask you if you 3 recall something and you don't, you're entitled to 4 say that. You don't have to -- 5 A I don't have to give you an explanation? 6 Q If you don't know the answer, that's fine. 7 A I want to give you an explanation. Okay. 8 I do not recall what the subject was. 9 Q I appreciate your willingness to be 10 helpful. I just want you to know that I have to ask 11 the questions. If you don't recall something from 12 nine years ago, that's fair. 13 A That doesn't help you much, but go ahead. 14 Q Okay. Thank you. 15 But if we look through it and it jogs your 16 memory, let us know. 17 I just want to look at the -- there is a 18 heading at the bottom that says, "Industry 19 Statistics and Economics," the bottom of page 1 and 20 spills over to page 2. 21 Why don't you just review that section. 22 A Ken Looper was their vice president. He 23 presented -- he was a very big man on statistics. 24 We corresponded -- his company is the 25 largest company in the United States, it was then</p>	<p>1 Q Okay. And have you read it? 2 A I'm trying to read it. 3 Q Okay. You don't have to read it out loud. 4 A Okay. Okay. There is a statement about 5 stop backfilling. 6 Is that your question? 7 Q Well, that was going to be my question. 8 All right. So you see a reference to Gene 9 Gregory pleading with the attendees at the meeting 10 to take care of business by reducing their flock 11 age, stop backfilling and the use of old depreciated 12 houses? 13 A Yes, I do see that. 14 Q Does that refresh your recollection on 15 views expressed by Mr. Gregory at the time about 16 this use of backfilling? 17 A This was four months beyond -- four or five 18 months beyond my complete article here that we just 19 talked about. 20 Now, the problem has not been resolved in 21 four months. 22 MR. GODLSTEIN: Don, Steig's question was 23 does that refresh your recollection about -- 24 BY MR. OLSON: 25 Q About Mr. Gregory's views on backfilling in</p>

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<p>1 2004.</p> <p>2 A I understand he's still concerned.</p> <p>3 Q And Mr. Gregory, at this meeting that you</p> <p>4 attended, pleaded with producers to stop</p> <p>5 backfilling; is that your understanding?</p> <p>6 MR. TAKENOUCHI: Objection to form.</p> <p>7 THE WITNESS: Along with several other</p> <p>8 things.</p> <p>9 BY MR. OLSON:</p> <p>10 Q And these other things are reducing their</p> <p>11 flock age.</p> <p>12 What does that refer to?</p> <p>13 MR. TAKENOUCHI: Objection to form.</p> <p>14 THE WITNESS: I'm trying to think what</p> <p>15 reducing the flock age would result in.</p> <p>16 To me it would result in higher</p> <p>17 productivity per bird.</p> <p>18 BY MR. OLSON:</p> <p>19 Q If you're not sure what Mr. Gregory is</p> <p>20 referring to, that's fine.</p> <p>21 A Okay. I don't know.</p> <p>22 Q Okay. And when Mr. Gregory pleaded with</p> <p>23 the attendees to take care of business by -- and</p> <p>24 refers to the use of old depreciated houses, do you</p> <p>25 know what that was referring to?</p>	<p>1 and would have discussed it in our own Scientific</p> <p>2 Advisory Committee.</p> <p>3 Q And in the Scientific Advisory Committee,</p> <p>4 and I believe we went over this yesterday, do you</p> <p>5 recall that that committee said that there should be</p> <p>6 a minimum of 4 inches of feeder space per hen?</p> <p>7 MR. TAKENOUCHI: Objection; vague as to</p> <p>8 time.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. OLSON:</p> <p>11 Q But the producer committee at UEP didn't</p> <p>12 put that 4 inch requirement in the guidelines?</p> <p>13 MR. TAKENOUCHI: Objection to form.</p> <p>14 THE WITNESS: I don't know about the</p> <p>15 manuscript that you've handed out here yesterday,</p> <p>16 whether that was the final member copy or if that</p> <p>17 was a draft copy.</p> <p>18 BY MR. OLSON:</p> <p>19 Q I believe you're referring to the</p> <p>20 scientific committee guidelines and not the producer</p> <p>21 guidelines.</p> <p>22 But, in any case, do you recall that the</p> <p>23 Scientific Advisory Committee learned that under the</p> <p>24 cage space guidelines that were being implemented by</p> <p>25 UEP, birds were actually getting less feeder space</p>
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<p>1 A I can't -- I do not know what he is getting</p> <p>2 at.</p> <p>3 Q Okay. You can put that aside.</p> <p>4 (Deposition Exhibit 22 was marked for</p> <p>5 identification by the court reporter</p> <p>6 and is attached hereto.)</p> <p>7 BY MR. OLSON:</p> <p>8 Q Let me hand you what is marked Bell 22, and</p> <p>9 this document is Bates-stamped UE0294465 through</p> <p>10 -4468.</p> <p>11 I'll ask you, Mr. Bell, if you can identify</p> <p>12 this as the minutes of a joint meeting of the UEP</p> <p>13 Scientific Advisory Committee and UEP Producer</p> <p>14 Committee For Animal Welfare dated June 10th and</p> <p>15 11th, 2004?</p> <p>16 A Yes.</p> <p>17 Q And do you recall this meeting?</p> <p>18 A Vaguely.</p> <p>19 Q Do you recall why a joint meeting of the</p> <p>20 Scientific Advisory Committee and the producer</p> <p>21 committee was held at this time?</p> <p>22 A No, I don't.</p> <p>23 Q Do you recall discussions about the issue</p> <p>24 of feeder space guidelines around this time?</p> <p>25 A Apparently we discussed it at this meeting</p>	<p>1 than they had previously?</p> <p>2 MR. TAKENOUCHI: Objection; form.</p> <p>3 BY MR. OLSON:</p> <p>4 Q Well, actually, why don't I refer you to --</p> <p>5 if you look at the opening comments by Chairman</p> <p>6 Bahan.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Who is Paul Bahan?</p> <p>10 A He is a producer. And he was the chairman</p> <p>11 of the UEP animal welfare committee.</p> <p>12 Q And do you see where Mr. Bahan -- the</p> <p>13 minutes say he stated that the scientific committee</p> <p>14 had supported UEP's feeder space guidelines until it</p> <p>15 became known that the new deeper cage was actually</p> <p>16 reducing feeder space?</p> <p>17 MR. TAKENOUCHI: Objection; misstates the</p> <p>18 document.</p> <p>19 THE WITNESS: I think that that's a true</p> <p>20 statement. The cage manufacturers did start to</p> <p>21 change the shape of their cages in order to, more or</p> <p>22 less, address this issue, but they never did get to</p> <p>23 the 4 inches of feeder space.</p> <p>24 BY MR. OLSON:</p> <p>25 Q So would it be correct to say that under</p>

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<p style="text-align: right;">236</p> <p>1 the UEP program as of mid-2004, as that program was</p> <p>2 implemented, birds are actually getting less feeder</p> <p>3 space, in some cases, than they had before?</p> <p>4 MR. TAKENOUCHI: Objection; foundation,</p> <p>5 lacks personal knowledge. Objection to form.</p> <p>6 BY MR. OLSON:</p> <p>7 Q Was that your understanding?</p> <p>8 A I don't know of anybody that's made that --</p> <p>9 drawn that conclusion, because they were getting</p> <p>10 less than 4 inches before until a much earlier stage</p> <p>11 when they got 4 inches of feeder space. Then the</p> <p>12 changes of the cage dimensions itself, I don't think</p> <p>13 anybody has said that this is equal to this or</p> <p>14 anything like that.</p> <p>15 (Deposition Exhibit 23 was marked for</p> <p>16 identification by the court reporter</p> <p>17 and is attached hereto.)</p> <p>18 BY MR. OLSON:</p> <p>19 Q Let me hand you what we've marked Bell 23.</p> <p>20 A Are you through with this one?</p> <p>21 Q Yes.</p> <p>22 This is Bates-stamped BELL-D-00028597</p> <p>23 through -28599.</p> <p>24 And why don't you briefly review the</p> <p>25 document and let us know when you're done.</p>	<p style="text-align: right;">238</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q But then when UEP adopted its guideline, it</p> <p>4 took out the "4 inches per bird," right?</p> <p>5 MR. TAKENOUCHI: Objection; foundation.</p> <p>6 THE WITNESS: That's what I recognized,</p> <p>7 yes.</p> <p>8 BY MR. OLSON:</p> <p>9 Q And then if you read the rest of this, does</p> <p>10 it refresh your recollection that under the UEP</p> <p>11 program that was implemented, it actually became a</p> <p>12 concern that feeder space was being reduced from</p> <p>13 what it was previously?</p> <p>14 A Up through the fourth paragraph -- fourth</p> <p>15 paragraph, we're progressing with time, so it is a</p> <p>16 chronological discussion up to that point. We</p> <p>17 haven't resolved -- well go ahead to the next</p> <p>18 paragraph.</p> <p>19 Q What the fourth paragraph says is the</p> <p>20 majority of cage equipment at the time of the</p> <p>21 program being introduced provided 2.8 inches of</p> <p>22 feeder space.</p> <p>23 A Yes.</p> <p>24 Q For 56 square inches.</p> <p>25 So that's less than 4 inches?</p>
<p style="text-align: right;">237</p> <p>1 A Are we only concerned about the feeder</p> <p>2 space at this point?</p> <p>3 Q No.</p> <p>4 A Go ahead and you can give it a try.</p> <p>5 Q Do you recall -- well, first can you</p> <p>6 identify this as a document that you prepared titled</p> <p>7 "Unresolved Animal Welfare Issues"?</p> <p>8 A I believe I did, but I don't see any</p> <p>9 indication of that.</p> <p>10 Q I can tell you that in the metadata that</p> <p>11 came with the documents it is indicated it is dated</p> <p>12 August 2004?</p> <p>13 A 2004?</p> <p>14 Q Yes.</p> <p>15 So there is a heading that says "Feeder</p> <p>16 Space."</p> <p>17 A Yes.</p> <p>18 Q And what this report says is the Scientific</p> <p>19 Advisory Committee wrote in their September 2000</p> <p>20 recommendations, which is the date of the document,</p> <p>21 the exhibit we've looked at previously, the</p> <p>22 following regarding feeder space, and that is that a</p> <p>23 minimum feeder space of 4 inches per bird should be</p> <p>24 allocated such that all birds can feed</p> <p>25 simultaneously.</p>	<p style="text-align: right;">239</p> <p>1 A That's correct.</p> <p>2 Q And the next paragraph says with the new</p> <p>3 cages that were being implemented, feeder space was</p> <p>4 actually being produced -- was actually being</p> <p>5 reduced and sometimes only providing 2.23 inches of</p> <p>6 feeder space, correct?</p> <p>7 MR. TAKENOUCHI: Objection to form.</p> <p>8 THE WITNESS: No, I don't see that in the</p> <p>9 fourth -- one, two, three, fourth paragraph.</p> <p>10 BY MR. OLSON:</p> <p>11 Q Fifth paragraph.</p> <p>12 A I'm on the fourth. We talked about going</p> <p>13 from 2.8 to 3.35. So that's during the transition</p> <p>14 period as you're increasing from 56 inches to 67.</p> <p>15 Q And that's what was -- that's what --</p> <p>16 A At that point we still haven't -- let me</p> <p>17 finish my thought.</p> <p>18 That hasn't gotten into the manufacturers</p> <p>19 reshaping the cage.</p> <p>20 Q All right. Now look at the next paragraph.</p> <p>21 A Okay. I understand that paragraph.</p> <p>22 Q All right. So the next one says that,</p> <p>23 actually, feeder space was being reduced under some</p> <p>24 of the cages that met the UEP guidelines.</p> <p>25 MR. TAKENOUCHI: Objection; form, no</p>

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<p style="text-align: right;">240</p> <p>1 question pending.</p> <p>2 BY MR. OLSON:</p> <p>3 Q Right?</p> <p>4 A They were heading in a direction away from</p> <p>5 where they were originally on feeder space.</p> <p>6 Q So on feeder space things were getting</p> <p>7 worse?</p> <p>8 A Not getting rosy.</p> <p>9 Q All right. Now, on cage configuration,</p> <p>10 that's the next topic of this document --</p> <p>11 A Okay. Got it.</p> <p>12 Q -- the scientific committee wrote that,</p> <p>13 "Cage configuration should be such that manure from</p> <p>14 birds in upper cage levels does not drop on birds in</p> <p>15 lower level cages."</p> <p>16 And that's --</p> <p>17 A Common sense.</p> <p>18 Q -- common sense from a welfare standpoint,</p> <p>19 right?</p> <p>20 A Yes.</p> <p>21 Q But what this lays out is that producers</p> <p>22 hadn't been meeting that recommendation under the</p> <p>23 program either, right?</p> <p>24 MR. TAKENOUCHI: Objection to form,</p> <p>25 leading, misstates the record.</p>	<p style="text-align: right;">242</p> <p>1 it's a different procedure that you can accomplish.</p> <p>2 I don't believe anybody has been shut down</p> <p>3 for his manure to be continuing to be dropping</p> <p>4 through on years 1, 2, 3, 4, 5 and 6.</p> <p>5 Q I don't either.</p> <p>6 Do you see the next heading, "Usable Floor</p> <p>7 Space and Cage Height"?</p> <p>8 A Let's see -- yes, yes.</p> <p>9 Q And this refers to what the Scientific</p> <p>10 Advisory Committee recommended about floor space and</p> <p>11 cage height. And I'll let you read that to</p> <p>12 yourself.</p> <p>13 A Go ahead. I understand.</p> <p>14 Q And then it says, "UEP adopted the</p> <p>15 following recommendation," and in doing so it took</p> <p>16 out two sentences of what the advisory committee</p> <p>17 recommended, didn't it?</p> <p>18 MR. TAKENOUCHI: Objection to form, lack of</p> <p>19 foundation.</p> <p>20 BY MR. OLSON:</p> <p>21 Q Well, and to be specific, the Scientific</p> <p>22 Advisory Committee referred to, "A cage height of 16</p> <p>23 to 17 inches generally being acceptable for small</p> <p>24 Leghorn strains, while larger strains will require</p> <p>25 taller cages."</p>
<p style="text-align: right;">241</p> <p>1 THE WITNESS: I never thought of this</p> <p>2 before, but the individual components saying that</p> <p>3 there is eight components or ten components of the</p> <p>4 guidelines, I assume that the timetable applies to</p> <p>5 all of them. No? How do you come to that</p> <p>6 conclusion?</p> <p>7 BY MR. OLSON:</p> <p>8 Q Well, we don't need to go back and forth on</p> <p>9 this.</p> <p>10 A Okay.</p> <p>11 Q But what this says is in June of 2004 there</p> <p>12 had been a recognition that producers had not</p> <p>13 followed that recommendation about manure dropping</p> <p>14 directly on birds in lower cages.</p> <p>15 A May I comment?</p> <p>16 Q Let's just state that's what this document</p> <p>17 indicates, right?</p> <p>18 A All right.</p> <p>19 Q What's your comment?</p> <p>20 A You do not have the ability to change</p> <p>21 overnight. If the cage house was designed that way,</p> <p>22 it's going to stay that way until you tear the house</p> <p>23 down.</p> <p>24 But on the bird density question, you can</p> <p>25 change that overnight by just removing a bird. So</p>	<p style="text-align: right;">243</p> <p>1 Do you see that?</p> <p>2 A I see it.</p> <p>3 Q And the UEP guidelines took that aspect</p> <p>4 out, right?</p> <p>5 MR. TAKENOUCHI: Objection to form.</p> <p>6 THE WITNESS: I believe they substituted</p> <p>7 "to stand comfortably upright." I don't see that --</p> <p>8 well, no, that's part of the advisory committee's</p> <p>9 also.</p> <p>10 So what was left out is what you just said,</p> <p>11 the cage height issue --</p> <p>12 BY MR. OLSON:</p> <p>13 Q And that being left out raised concerns as</p> <p>14 well from a welfare standpoint, right?</p> <p>15 MR. TAKENOUCHI: Objection to form, lack of</p> <p>16 personal knowledge.</p> <p>17 THE WITNESS: I'm not following what you're</p> <p>18 saying.</p> <p>19 BY MR. OLSON:</p> <p>20 Q We can move on. Do you see the section on</p> <p>21 the last page entitled "Back Filling"?</p> <p>22 A Yes.</p> <p>23 Q And it says, "When the original guidelines</p> <p>24 were written, backfilling was allowed only when</p> <p>25 unexpected starter pullets were grown."</p>

23 (Pages 240 to 243)

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<p>1 Do you see that?</p> <p>2 A I have no idea what that means.</p> <p>3 Q That's what I was going to ask. All right.</p> <p>4 You can put that aside.</p> <p>5 I need to take a break.</p> <p>6 Let's go off the record.</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 approximately 11:54 a.m., and we're going off the</p> <p>9 record.</p> <p>10 (Recess.)</p> <p>11 (Deposition Exhibit 24 was marked for</p> <p>12 identification by the court reporter</p> <p>13 and is attached hereto.)</p> <p>14 THE VIDEOGRAPHER: The time is</p> <p>15 approximately 1:10 p.m., and we're back on the</p> <p>16 record.</p> <p>17 BY MR. OLSON:</p> <p>18 Q Okay. Mr. Bell, I've handed you what has</p> <p>19 been marked Bell Exhibit 24. It is Bates-stamped</p> <p>20 UE0918791 through -796.</p> <p>21 I can see you flipping through the</p> <p>22 document. When you've had a brief chance to</p> <p>23 familiarize yourself with the document, please let</p> <p>24 me know.</p> <p>25 And I want to really focus, if I can, just</p>	<p>1 Q The next page, and it is in -93.</p> <p>2 A Third, "I recall."</p> <p>3 Q I would just like you to confirm that these</p> <p>4 were your words.</p> <p>5 It says, "I recall many years ago that we</p> <p>6 also recommended 72 square inches for cages. We</p> <p>7 also recommended against molting. Then, we</p> <p>8 suggested that molting gives better returns and now,</p> <p>9 under present economic conditions, we'll be</p> <p>10 emphasizing no-molt programs. Things change,</p> <p>11 assumptions need to be understood, economics plays a</p> <p>12 major role in all such decisions," and then it</p> <p>13 continues.</p> <p>14 Were those your words?</p> <p>15 A Yes.</p> <p>16 Q Okay. You can put that aside.</p> <p>17 (Deposition Exhibit 25 was marked for</p> <p>18 identification by the court reporter</p> <p>19 and is attached hereto.)</p> <p>20 BY MR. OLSON:</p> <p>21 Q Let me hand you what we marked Bell</p> <p>22 Exhibit 25.</p> <p>23 And this document was produced from your</p> <p>24 file. And, for the record, there is a Bates stamp</p> <p>25 at the bottom of the BELL-D-0002811.</p>
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<p>1 on one e-mail. This is going to be brief.</p> <p>2 A Go ahead.</p> <p>3 Q It is the one on the second page that is</p> <p>4 from Don Lucy Bell dated Friday, May 30th, 2008 at</p> <p>5 1:02 p.m.</p> <p>6 A Yes.</p> <p>7 Q Now, donlucybell@charter.net, is that your</p> <p>8 e-mail address?</p> <p>9 A That's our personal address, yes.</p> <p>10 Q That's one that you use?</p> <p>11 A Now a hundred percent.</p> <p>12 Q And so can you identify that e-mail as one</p> <p>13 you wrote and sent to Gene Gregory on May 30, 2008?</p> <p>14 A Yes, I wrote the individual -- part of</p> <p>15 this.</p> <p>16 MR. GODLSTEIN: By the way, before you ask</p> <p>17 another question, the noise next door, Don, is that</p> <p>18 distracting you?</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. OLSON:</p> <p>21 Q If it is, let us know.</p> <p>22 Now, I just want to look at the -- I</p> <p>23 believe it is the third full paragraph of your</p> <p>24 e-mail that starts "I recall."</p> <p>25 A What page?</p>	<p>1 And I would just like you to generally</p> <p>2 identify this document for us.</p> <p>3 A It appears to be a letter from Ken</p> <p>4 Koelkebeck at the University of Illinois to Gene</p> <p>5 relative to molting, non-feed withdrawal molting.</p> <p>6 Q And Mr. Koelkebeck had been involved in</p> <p>7 2002 doing research on the effectiveness of non-feed</p> <p>8 withdrawal molting; is that --</p> <p>9 A Yes.</p> <p>10 MR. TAKENOUCHI: Objection to form.</p> <p>11 BY MR. OLSON:</p> <p>12 Q And you were familiar with his research?</p> <p>13 A Yes.</p> <p>14 Q Let's just turn to page 18 of the research.</p> <p>15 That's the summary. There is the heading "Summary</p> <p>16 and Take Home Message."</p> <p>17 A Yes.</p> <p>18 Q And it begins -- well, actually, before we</p> <p>19 get there, at the bottom there is acknowledgement.</p> <p>20 It says, "The authors would like to thank Don Bell</p> <p>21 at the University of California, Robert Pierre,</p> <p>22 California Egg Commission, Dr. Mark Farmer, Sr., of</p> <p>23 Ridley Feed Ingredients, Inc., and Gene Gregory of</p> <p>24 United Egg Producers for their financial support" --</p> <p>25 A This is his letter and this is his</p>

24 (Pages 244 to 247)

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<p>1 acknowledgement.</p> <p>2 Q Right.</p> <p>3 A But I differentiate between my part of that</p> <p>4 acknowledgement and others.</p> <p>5 Q Okay. And do you know why you were being</p> <p>6 thanked?</p> <p>7 A Thanked for advice and literature and</p> <p>8 research.</p> <p>9 But it sounds like that I'm involved in the</p> <p>10 financial support.</p> <p>11 Q And you weren't?</p> <p>12 A No.</p> <p>13 Q Okay. So, to your understanding, he's</p> <p>14 thanking you for advice and --</p> <p>15 A Whatever -- yes.</p> <p>16 Q Okay. All right. Back to the "Summary and</p> <p>17 Take Home Message."</p> <p>18 A Okay.</p> <p>19 Q I'm going to read the first sentence. It</p> <p>20 says, "In summary, the results of this study</p> <p>21 indicate that feeding a wheat middlings diet, wheat</p> <p>22 middlings and corn combination diet, or corn gluten</p> <p>23 feed molt diet to initiate a molt in commercial</p> <p>24 layers may be effective alternative feeding programs</p> <p>25 compared to traditional feed removal methods."</p>	<p>1 under the antitrust laws?</p> <p>2 A Well, yes, in many of our manuscripts that</p> <p>3 we've gone through already, many ideas are</p> <p>4 submitted, many of the relationships are discussed.</p> <p>5 Most of it boils down to that we need to -- the</p> <p>6 industry -- excuse me for using the word "we."</p> <p>7 The industry needs to reduce the number of</p> <p>8 eggs they produce, especially during hard times.</p> <p>9 Q And did you have any discussions with</p> <p>10 Gene Gregory or Al Pope about whether there were any</p> <p>11 limits or prohibitions under the antitrust laws</p> <p>12 about what could be done to have the industry reduce</p> <p>13 the number of eggs that they produce?</p> <p>14 A I'm not an expert in laws about -- of that</p> <p>15 nature. We -- or I felt it was perfectly within my</p> <p>16 realm to be concerned about their economic</p> <p>17 well-being, and that this was a subject of managing</p> <p>18 the industry as opposed to managing the individual</p> <p>19 farm and that we were not doing anything illegal.</p> <p>20 Q And let me just try to focus you</p> <p>21 specifically on my question. I appreciate what --</p> <p>22 your efforts to be helpful, but just try to focus on</p> <p>23 this specific aspect.</p> <p>24 A Okay.</p> <p>25 Q I'm asking whether you recall specifically</p>
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<p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q Was that your understanding of the summary</p> <p>4 of the research that Mr. --</p> <p>5 A In his particular research --</p> <p>6 MR. TAKENOUCHI: Objection; lack of</p> <p>7 personal knowledge about whether he's reading it.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. OLSON:</p> <p>10 Q Okay. Thank you.</p> <p>11 Now, Mr. Bell, did you ever have</p> <p>12 discussions with Mr. Gregory -- that is,</p> <p>13 Gene Gregory -- or Al Pope about any limits on what</p> <p>14 could be done to manage supply in the United States</p> <p>15 under the antitrust laws?</p> <p>16 MR. TAKENOUCHI: Objection to form.</p> <p>17 THE WITNESS: First of all, there was an</p> <p>18 assumption that they were exempt because they were a</p> <p>19 cooperative. That's my assumption. I've never</p> <p>20 asked an attorney for their opinion about that</p> <p>21 question.</p> <p>22 BY MR. OLSON:</p> <p>23 Q And did you ever discuss with Gene Gregory</p> <p>24 or Al Pope whether there were any limits about what</p> <p>25 could be done to manage supply in the United States</p>	<p>1 anything Gene Gregory or Al Pope told you about</p> <p>2 limits on what could be done or things that could</p> <p>3 not be done?</p> <p>4 A No.</p> <p>5 Q And so this would include during the period</p> <p>6 you were on retainer by UEP to write your memos, you</p> <p>7 never received any guidance about what could be done</p> <p>8 or said under the antitrust laws?</p> <p>9 MR. TAKENOUCHI: Objection; misstates prior</p> <p>10 testimony. Objection to form.</p> <p>11 THE WITNESS: No discussion was ever made</p> <p>12 with me of the antitrust laws.</p> <p>13 BY MR. OLSON:</p> <p>14 Q Now, when you -- let's talk about the</p> <p>15 process of you preparing these memos while you were</p> <p>16 on retainer by UEP. We've seen that sometimes</p> <p>17 Mr. Gregory would suggest a topic for you, right?</p> <p>18 A Yes.</p> <p>19 Q Sometimes would you come up with a topic on</p> <p>20 your own?</p> <p>21 A 95 percent of the time, yes.</p> <p>22 Q And then when you finished the memo, what</p> <p>23 would you do?</p> <p>24 A I would e-mail it to Mr. Gregory.</p> <p>25 Q And would Mr. Gregory -- were there ever</p>

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<p>1 times that Mr. Gregory wrote back to you and asked</p> <p>2 you to make changes in what you had prepared?</p> <p>3 A No.</p> <p>4 Q That never happened?</p> <p>5 A Not to my knowledge.</p> <p>6 (Deposition Exhibit 26 was marked for</p> <p>7 identification by the court reporter</p> <p>8 and is attached hereto.)</p> <p>9 BY MR. OLSON:</p> <p>10 Q Let me hand you what we've marked Bell 26.</p> <p>11 And why don't you take out Exhibit 15.</p> <p>12 A 1-5?</p> <p>13 Q Yes.</p> <p>14 A What do we have here, a new one?</p> <p>15 Q Yes.</p> <p>16 A You want to talk about that first?</p> <p>17 Q Pull out 15 and put that to the side, and</p> <p>18 I'd like you to look at what we've marked as 26.</p> <p>19 MR. TAKENOUCHI: Can we get the Bates</p> <p>20 number?</p> <p>21 MR. OLSON: Yes. The Bates -- Number 26 is</p> <p>22 UC_E00055875.</p> <p>23 Q Now, Mr. Bell, can you identify Bell 26 as</p> <p>24 an e-mail you received from Gene Gregory on April</p> <p>25 17th, 2002?</p>	<p>1 A My draft that I would have sent him, this</p> <p>2 is a finished product.</p> <p>3 Q How can you tell it is a finished product?</p> <p>4 A It is what we are talking about. It is an</p> <p>5 evolution. I wrote something, he's giving comments</p> <p>6 about it and there must be a product.</p> <p>7 Did I respond to his suggestion?</p> <p>8 Q We haven't found that in your e-mails.</p> <p>9 A Okay.</p> <p>10 Q Do you know whether you did or not?</p> <p>11 A Let me look at the dates again. This is</p> <p>12 written on April 15 and he's come back on the 17th</p> <p>13 two days later and made his comments, and then what</p> <p>14 happened?</p> <p>15 Q That's what I was going to ask you.</p> <p>16 A I don't know -- I don't know what the -- he</p> <p>17 wanted me to respond.</p> <p>18 Do I have a response here? Here we go.</p> <p>19 No, that's not a response to that letter.</p> <p>20 There is a 16, but that's one day earlier.</p> <p>21 So do we have anything on the 18th or 19th</p> <p>22 that would say I disagree with you or that I prefer</p> <p>23 my own wording?</p> <p>24 Q We've looked. We haven't seen whether you</p> <p>25 did or not?</p>
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<p>1 A Yes.</p> <p>2 Q And Mr. Gregory is responding to an e-mail</p> <p>3 that you sent to him on April 16th, 2002 in which</p> <p>4 you had attached one of your economic memos; is that</p> <p>5 right?</p> <p>6 A Yes, yes.</p> <p>7 Q And that's the memo that's Exhibit 15,</p> <p>8 right?</p> <p>9 A Yes.</p> <p>10 Q And does Bell Exhibit 26 refresh your</p> <p>11 recollection about Mr. Gregory requesting that you</p> <p>12 make changes?</p> <p>13 A Yes. I interpreted that as editorial</p> <p>14 suggestions, not necessarily that I responded to</p> <p>15 that, but he was suggesting this.</p> <p>16 Q So in Bell Exhibit 26 Mr. Gregory is making</p> <p>17 a suggestion about changes in your economic memo in</p> <p>18 regard to your discussion of the -- what he calls</p> <p>19 UEP cage density reduction proposal.</p> <p>20 Do you see that?</p> <p>21 A Let me have a minute, please?</p> <p>22 Q Sure.</p> <p>23 A Do you have the original?</p> <p>24 Q I don't know if 15 is the original or not.</p> <p>25 Do you?</p>	<p>1 A Okay.</p> <p>2 Q So let's back up a little bit.</p> <p>3 A Okay. Go ahead.</p> <p>4 Q For the sake of the record, what</p> <p>5 Mr. Gregory asks you to do is to make a change in</p> <p>6 how you discussed UEP's cage density reduction</p> <p>7 proposal, right?</p> <p>8 MR. TAKENOUCHI: Objection to form.</p> <p>9 THE WITNESS: That's the way I read it,</p> <p>10 yes.</p> <p>11 BY MR. OLSON:</p> <p>12 Q And he says that, "I would prefer that we</p> <p>13 focus upon these changes being animal husbandry</p> <p>14 guidelines, which results in increased space for</p> <p>15 hens," right?</p> <p>16 A That's what he says.</p> <p>17 Q And he says, "I don't want anyone to think</p> <p>18 of this as the supply reduction program, even though</p> <p>19 we know the effect will be the same in the short</p> <p>20 term," that's what he says, right?</p> <p>21 A That's what he says.</p> <p>22 Q And you, sitting here today, do you</p> <p>23 remember how you responded?</p> <p>24 A No, but I think I responded to you often</p> <p>25 enough here that I don't consider -- that I do</p>

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<p style="text-align: right;">256</p> <p>1 consider it an economic issue. And to separate 2 cause and effect which came first, the chicken or 3 the egg, and these questions, I'm just not sure how 4 to respond to you -- as a supply reduction program, 5 some people -- some people may have suggested this, 6 some people may have worked with this, some people 7 have -- may have voted for it, but in my role we 8 weren't working on welfare. 9 Q And do you -- 10 A Go ahead. 11 Q Did you have an understanding that 12 Gene Gregory was concerned about the program being 13 discussed as a supply reduction program? 14 MR. TAKENOUCHI: Objection; lack of 15 personal knowledge. 16 THE WITNESS: I think editor, and he is the 17 ultimate editor, because he has to put it out, would 18 be concerned about somebody's phraseology and 19 emphasis, degrees of emphasis relative to his own 20 emphasis. 21 I wrote it from my viewpoint, and it's not 22 perfect. So he apparently thought the tone or the 23 emphasis was somewhat controversial and wanted me to 24 reconsider it in his letter. 25 BY MR. OLSON:</p>	<p style="text-align: right;">258</p> <p>1 identification by the court reporter 2 and is attached hereto.) 3 BY MR. RAYLE: 4 Q I'll hand you a document, Exhibit 27 for 5 identification, and ask you to turn to page 26. The 6 last two digits of the Bates number is -26. 7 A Got you. 8 Go ahead. 9 MR. TAKENOUCHI: For the record, it is 10 Bates BELL-D-00000024. 11 MR. RAYLE: Thank you. 12 Q And particularly section 49-B? 13 A Go ahead. 14 Q Generally, can you identify what this 15 document is, sir? 16 A A chapter in the textbook. 17 Q And the name of the textbook is? 18 A "Commercial Meat" -- "Poultry, Meat and Egg 19 Production." 20 Q Thank you. 21 And did you author this particular -- 22 A I was the senior editor, and I authored 23 about a third of the book. 24 Q Okay. And in the third paragraph of 25 section 49-B, it starts out, "In the United States,</p>
<p style="text-align: right;">257</p> <p>1 Q Do you recall any other times that 2 Mr. Gregory warned you about how to characterize the 3 program? 4 MR. TAKENOUCHI: Objection to form, 5 misstates prior testimony. 6 THE WITNESS: Of all the correspondence 7 that we've had, I really can't recall anything 8 specific. 9 MR. OLSON: Okay. So at this point I'm 10 prepared to pass the witness on the understanding 11 that we've reserved some time today in case we need 12 it, hopefully we won't, but just in case we do, and 13 on the understanding that we have with Mr. Goldstein 14 that after we complete our review of the documents 15 that have been recently produced and are yet to be 16 produced, that we can come back for some amount of 17 time, additional time, that we'll discuss. 18 MR. GODLSTEIN: Agreed. 19 20 EXAMINATION 21 BY MR. RAYLE: 22 Q Good afternoon, sir, my name is Merrick 23 Rayle. As I told you earlier, I represent the 24 Indirect Purchaser Plaintiffs. 25 (Deposition Exhibit 27 was marked for</p>	<p style="text-align: right;">259</p> <p>1 United Egg Producers Association makes a strong 2 effort" -- that section right there -- 3 A Yes. 4 Q Down a little bit there is a -- I think the 5 last sentence of that paragraph reads, "Even though 6 the recommendations are not heeded by everyone, 7 generally it has enough impact on the nation's flock 8 size to result in higher egg prices for everyone." 9 Do you see that, sir? 10 A Yes. 11 Q Can you tell us what was meant by the 12 phrase "to result in higher egg prices for 13 everyone"? 14 A "To result in higher egg prices for 15 everyone"? 16 As I've indicated before, every egg affects 17 every other egg, and so microscopically one farm 18 increasing their flock by 100,000 chickens is going 19 to affect everybody else, because that's just more 20 eggs to sell. So I believe that is a true 21 statement. 22 Q And would you include in the phrase 23 "everyone," would that include any consumer who 24 purchases shell eggs from retail stores? 25 A Obviously, consumers pay more than farmers</p>

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<p>1 get. And so if the farmer is trying to cover his</p> <p>2 costs and he tries to increase his price, who pays</p> <p>3 for it? The consumer.</p> <p>4 Q Thank you. You can put that aside, sir.</p> <p>5 (Deposition Exhibit 28 was marked for</p> <p>6 identification by the court reporter</p> <p>7 and is attached hereto.)</p> <p>8 BY MR. RAYLE:</p> <p>9 Q This is the last exhibit, for me, at least.</p> <p>10 Exhibit 28, for identification, is titled,</p> <p>11 "U.S. Farm and Retail Price Relationships - 1982 to</p> <p>12 2005."</p> <p>13 Have I correctly read that, sir?</p> <p>14 A Yes.</p> <p>15 Q The Bates number is UE0155821 and it goes</p> <p>16 through -831.</p> <p>17 I'd ask you to turn, if you would, please,</p> <p>18 to page 10 in the upper right-hand corner where the</p> <p>19 Bates number ends in -30.</p> <p>20 A 10 and what else?</p> <p>21 Q The lower right-hand corner, the last three</p> <p>22 numbers are -830.</p> <p>23 A Yes.</p> <p>24 Q First, can you identify what this document</p> <p>25 is?</p>	<p>1 A I'm on the graph here.</p> <p>2 Q No, the very first page.</p> <p>3 A Oh, the very first page.</p> <p>4 Go ahead.</p> <p>5 Q The fifth paragraph, last sentence, "This</p> <p>6 rather close agreement between the changes in price</p> <p>7 between the two series indicates that retailers are</p> <p>8 generally responding to changes in the marketplace</p> <p>9 with comparable shelf prices changes."</p> <p>10 Do you see that, sir?</p> <p>11 A It is saying it is basically parallel.</p> <p>12 MR. RAYLE: Nothing further, sir.</p> <p>13 Thank you for your time and patience.</p> <p>14 THE WITNESS: That's it?</p> <p>15 MR. RAYLE: That's it.</p> <p>16 THE WITNESS: Thank you, sir.</p> <p>17 MR. RAYLE: Thank you.</p> <p>18 MR. OLSON: Let's go off the record.</p> <p>19 THE VIDEOGRAPHER: This concludes media</p> <p>20 number 1 in the video deposition of Don Bell, Volume</p> <p>21 II. The time is approximately 1:37 p.m., and we are</p> <p>22 going off the record.</p> <p>23 (Recess.)</p> <p>24 THE VIDEOGRAPHER: This marks the beginning</p> <p>25 of media number 2 in the video deposition of</p>
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<p>1 A This page or the entire document?</p> <p>2 Q The entire document.</p> <p>3 A This was the subject of a speech I gave --</p> <p>4 I'm not sure where, I usually don't put that down --</p> <p>5 on the subject of marketing.</p> <p>6 Q Under -- sorry.</p> <p>7 A My sources for U.S. farm prices are</p> <p>8 different than my sources for retailing prices. I</p> <p>9 believe I indicate sources somewhere.</p> <p>10 Q On --</p> <p>11 A The emphasis of this article is how the</p> <p>12 differences are changing.</p> <p>13 Q All right. Under the category "General</p> <p>14 Conclusions," there are four bullets there.</p> <p>15 A Yes.</p> <p>16 Q And then under that is written, "The</p> <p>17 increases in spread between farm prices and retail</p> <p>18 prices appears to be a permanent change."</p> <p>19 Do you see that, sir?</p> <p>20 A Oh, you're down in the bottom now?</p> <p>21 Q Yes, sir.</p> <p>22 A It's a true statement.</p> <p>23 Q Thank you.</p> <p>24 Now, go to the very first page, fifth</p> <p>25 paragraph, last sentence.</p>	<p>1 Don Bell, Volume II. The time is approximately 1:51</p> <p>2 p.m., and we're back on the record.</p> <p>3</p> <p>4 EXAMINATION</p> <p>5 BY MR. TAKENOUCHI:</p> <p>6 Q Good afternoon, Mr. Bell. Thanks for</p> <p>7 taking the time out of your day for this.</p> <p>8 My name is Jason Takenouchi. I'm here on</p> <p>9 behalf of Nu-Cal Foods. I'm going to ask you some</p> <p>10 questions to try and clarify some of your testimony</p> <p>11 from today and also from yesterday. And there are</p> <p>12 also some other areas we'll talk about.</p> <p>13 A Fine.</p> <p>14 Q Now initially I'm going to go through a few</p> <p>15 documents you've already seen and just ask you some</p> <p>16 follow-up questions.</p> <p>17 If at any point you need to take a break,</p> <p>18 please let me know.</p> <p>19 Is there any reason you can't give your --</p> <p>20 continue to give your full and fair and complete</p> <p>21 testimony today?</p> <p>22 A I didn't quite hear that.</p> <p>23 Q Is there any reason you can't give your</p> <p>24 full and complete --</p> <p>25 A No, there isn't.</p>

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<p>1 Q -- testimony today?</p> <p>2 A No, I'm fine.</p> <p>3 Q Okay. Look at Bell 17. And the Bates</p> <p>4 number on the first page is CM430620. I think it is</p> <p>5 in front of you.</p> <p>6 A Yes.</p> <p>7 Q I think your questions earlier about an</p> <p>8 editorial that's in the middle of that packet there,</p> <p>9 the Bates number is -630 at the end --</p> <p>10 A Yes.</p> <p>11 Q It is the one that says the reasons why.</p> <p>12 Now, if you look on there, a little below the middle</p> <p>13 part of the page, do you see a paragraph starting</p> <p>14 "UEP's Animal Husbandry Guidelines"?</p> <p>15 A Yes.</p> <p>16 Q Could you read that first sentence there?</p> <p>17 A "UEP's animal husbandry guidelines were</p> <p>18 never intended as a supply management program."</p> <p>19 Q Okay. Now, I think when you were</p> <p>20 questioned about that before you weren't paying</p> <p>21 attention to some other language there, but for that</p> <p>22 particular portion of that sentence, did you</p> <p>23 understand that to be the case?</p> <p>24 A That was what I understand to be our</p> <p>25 mission as a committee.</p>	<p>1 Is this your question?</p> <p>2 Q Yes.</p> <p>3 A Yes. And that's why the committee on</p> <p>4 animal welfare, Scientific Advisory Committee for</p> <p>5 animal welfare, we placed as much emphasis as they</p> <p>6 did on the question of cage density.</p> <p>7 Q Now, is this knowledge about the benefits</p> <p>8 of cage density, was this something that only</p> <p>9 happened in the 2000 time frame or was this</p> <p>10 something that there was research on before 2000?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: I started my research in</p> <p>13 about 1960 on cage density, and over time you still</p> <p>14 see people researching this question.</p> <p>15 The current issue is very difficult to</p> <p>16 scientifically address.</p> <p>17 BY MR. TAKENOUCHI:</p> <p>18 Q But before 2000, had there been research on</p> <p>19 the benefits of cage density?</p> <p>20 A Oh, yes, much research.</p> <p>21 Q And were you aware of that research?</p> <p>22 A Oh, yes.</p> <p>23 Q Do you know why cage density came up in the</p> <p>24 context of the Scientific Advisory Committee's work?</p> <p>25 A Like I indicated, because of its impact on</p>
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<p>1 Q Okay. So this statement here was</p> <p>2 consistent with what your understanding of the</p> <p>3 mission was?</p> <p>4 A Yes.</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 BY MR. TAKENOUCHI:</p> <p>7 Q And when you say, "our mission as a</p> <p>8 committee," what do you mean?</p> <p>9 A The committee's mission that they were</p> <p>10 requested to study and recommend was not a supply</p> <p>11 management program, but, instead, it was an animal</p> <p>12 welfare committee, and that's what we emphasized.</p> <p>13 Q And you're referring to the Scientific</p> <p>14 Advisory Committee, correct?</p> <p>15 A Yes.</p> <p>16 Q Are there any animal welfare benefits to</p> <p>17 reduce the cage density?</p> <p>18 A Yes.</p> <p>19 Q And what are those?</p> <p>20 A Chickens would have -- would produce less</p> <p>21 eggs at more dense conditions. They will die at a</p> <p>22 higher rate, they will crack more eggs. They will</p> <p>23 have more health problems, as they are crowded, and</p> <p>24 they may pick at each other more if they are</p> <p>25 crowded.</p>	<p>1 the welfare of the chickens. The research -- I</p> <p>2 listed half a dozen right now, reasons, and the</p> <p>3 drive behind the committee's formation was the</p> <p>4 result of the humane society's concern about animal</p> <p>5 welfare. And that was the pressure, tens of</p> <p>6 thousands of dollars were being spent to argue their</p> <p>7 point, the humane society, as well as United Egg</p> <p>8 Producers. It had to be resolved, and it still has</p> <p>9 to be resolved.</p> <p>10 Q Around that time were there other entities</p> <p>11 that were making changes or demanding changes about</p> <p>12 animal welfare?</p> <p>13 A There's just a list as long as your arm of</p> <p>14 activist organizations that are promoting animal</p> <p>15 welfare as they interpret it. Some of it may</p> <p>16 emphasize cages, some of it may emphasize molting,</p> <p>17 some may emphasize beak trimming, some of it</p> <p>18 just they don't like animals to be used. That's a</p> <p>19 very big problem.</p> <p>20 Q And was this an issue back in 2000, 1999?</p> <p>21 A Yes, it was. Yes, it was.</p> <p>22 MR. GODLSTEIN: Don, if you could just try</p> <p>23 to remember with Jason, as you did with Steig, to</p> <p>24 let him get his full question out before you begin</p> <p>25 to answer.</p>

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<p>1 THE WITNESS: I'm sorry.</p> <p>2 MR. OLSON: And even if you would give me a</p> <p>3 pause in case I have an objection, that would be</p> <p>4 great too.</p> <p>5 BY MR. TAKENOUCHI:</p> <p>6 Q You can put that away for now, and let's</p> <p>7 look at Bell 16.</p> <p>8 A 16?</p> <p>9 Q Yes.</p> <p>10 This is Bates number UE135717 on the first</p> <p>11 page.</p> <p>12 I think you were asked a little bit -- you</p> <p>13 were questioned a little bit about this document.</p> <p>14 The first part of it is United Voices and the second</p> <p>15 part looks like a copy of commentary you did in</p> <p>16 2002.</p> <p>17 A Yes.</p> <p>18 Q Okay. So looking at your commentary in</p> <p>19 2002 --</p> <p>20 A Yes.</p> <p>21 Q -- I just wanted to draw your attention to</p> <p>22 the fourth page here, the second -- the fourth page.</p> <p>23 A I have the fourth page now.</p> <p>24 Q It has the comments on the bottom there?</p> <p>25 A Comments, yes.</p>	<p>1 then until now.</p> <p>2 And so if you want to see current, we'll</p> <p>3 say, 2007, '8, '9, '10, and so on, that those</p> <p>4 documents may not be in there.</p> <p>5 Q Okay. So looking a back at this particular</p> <p>6 report from July of 2002, do you believe this report</p> <p>7 was on the website?</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 THE WITNESS: 2002? It would be under a</p> <p>10 memo, and I guess Dr. Ernst would have considered</p> <p>11 that a newsletter, and so there is a heading</p> <p>12 "Newsletters." And then there is all the names of</p> <p>13 all of our newsletters, there may be six or eight</p> <p>14 different newsletters that we write.</p> <p>15 I do not know for sure whether he would</p> <p>16 include memos or not.</p> <p>17 BY MR. TAKENOUCHI:</p> <p>18 Q Okay. It's possible?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 THE WITNESS: I think strongly possible,</p> <p>21 yes, but it was his decision. These are all</p> <p>22 original, so I assume he would have thought they</p> <p>23 should be on the website.</p> <p>24 BY MR. TAKENOUCHI:</p> <p>25 Q And you say you promoted this website,</p>
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<p>1 Q Underneath that comments section there is a</p> <p>2 website address, animalscience.ucdavis.edu/avian.</p> <p>3 A Yes.</p> <p>4 Q What is that?</p> <p>5 A It's a website.</p> <p>6 Q Do you know what website that is?</p> <p>7 A Avian sciences, all relating to poultry.</p> <p>8 Q And how are you familiar with that website?</p> <p>9 A I contribute to it, I promote it. It's our</p> <p>10 communication tools of computer literate clients.</p> <p>11 Q And what, exactly, is on that website?</p> <p>12 A Everything on poultry -- turkeys, broilers,</p> <p>13 eggs, hatchery, feed, management, disease, et</p> <p>14 cetera, et cetera, et cetera.</p> <p>15 Q So are reports like this one on the</p> <p>16 website?</p> <p>17 A I believe the memos -- is that what we're</p> <p>18 talking about, this memo?</p> <p>19 Q This here.</p> <p>20 A I believe it is on there, I can't swear to</p> <p>21 it. The website was basically retired when</p> <p>22 Dr. Ernst, who controlled the website, retired about</p> <p>23 five or seven years ago.</p> <p>24 It was updated, I noticed, by somebody, and</p> <p>25 I hadn't figured out who, maybe once or twice since</p>	<p>1 correct?</p> <p>2 A In our newsletters, this statement right</p> <p>3 there is promoting it.</p> <p>4 Q Did you promote it in any other ways?</p> <p>5 A With this particular letter here every</p> <p>6 time, I would write an article from time to time</p> <p>7 saying why you should get into our website, what are</p> <p>8 the subjects on our website. I would feel there</p> <p>9 is -- we've communicated enough times that people</p> <p>10 would know that it exists, but it exists with 20 or</p> <p>11 30 or 50 other websites in poultry that are produced</p> <p>12 by other universities and so on.</p> <p>13 Q Okay. Now, looking at this document the</p> <p>14 first part is the United Voices newsletter and the</p> <p>15 second part --</p> <p>16 A Yes.</p> <p>17 Q -- is your memo.</p> <p>18 Now, this did not come from your</p> <p>19 production.</p> <p>20 Do you have any basis to believe that your</p> <p>21 memo was distributed to people along with this</p> <p>22 United Voices newsletter attached?</p> <p>23 A I do not know why it is attached here with</p> <p>24 a staple unless it was.</p> <p>25 It was -- at the top "Don Bell's</p>

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<p>1 newsletter," right there, so it was sent to 2 everybody on their mailing list that gets the United 3 Voices. 4 Q Well, did you receive a copy of United 5 Voices attaching your report to it? 6 A Well, I assume I did if everyone else did. 7 Q Okay. Do you remember getting that? As 8 you sit here today, do you remember getting a copy 9 of your report attached to United Voices? 10 A I cannot specifically if I got the one 11 dated July 29, 2002, specifically. 12 Q Okay. 13 A But I do get all of their newsletters. 14 Q Yeah, I understand that. 15 I want to show you -- referring back to -- 16 take a look at Bell 19. This is Bates-numbered UE 17 880125. 18 And this is another -- it's a commentary 19 you wrote in March 2004. 20 A Yes. 21 Q Do you remember being asked about this 22 earlier today? 23 A Yes. Yes, we talked about it. 24 Q And so on here, on the last page here, 25 there, again, is that same website.</p>	<p>1 A Let me read that here. 2 There's about 20 to 30 egg price changes a 3 year in the nation. Half of them -- 4 Q Let's look -- go ahead. 5 A Half of them go up and half of them go 6 down. 7 Now you're asking specifically 2004? 8 Q The period after this, mid to late 2004 9 going into 2005, was there a price trend in that 10 period that you recall? 11 MR. OLSON: Objection to form. 12 THE WITNESS: Well, this time is right 13 after the avian influenza problem on the East Coast 14 where 2 million birds, I believe, were disposed or 15 killed. That, in itself, raised the price of eggs 16 for the next year or two for the nation. 17 After that was over with and production 18 came back to normal, the rest of the nation took 19 their retail egg prices down to where it was. 20 California left it where it was because they had 21 shown that that pricing policy that they used at 22 that time was effective. 23 BY MR. TAKENOUCHI: 24 Q So after the avian influenza in effect in 25 2004, prices dropped again?</p>
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<p>1 Do you see that? 2 A Yes, yes it is. 3 Q And it says, "New items are added monthly." 4 Do you see that language? 5 A Yes. 6 Q Do you think this memo was on the website? 7 MR. OLSON: Objection; form. 8 THE WITNESS: If it was on the website, it 9 would be under newsletters and not under new items. 10 New items refers to miscellaneous things. 11 BY MR. TAKENOUCHI: 12 Q Do you see any reason why this newsletter 13 won't have been on the website? 14 MR. OLSON: Objection to form. 15 THE WITNESS: Well, it is one of the 16 series, I don't know how many we wrote altogether, 17 but I don't know if he would be selective in leaving 18 things out or putting things in, I don't know. I 19 don't know that. 20 BY MR. TAKENOUCHI: 21 Q Okay. So this memo talks about some egg 22 prices around this time in March 2004? 23 A Yes. 24 Q After March 2004, was there a change in egg 25 prices?</p>	<p>1 MR. TAKENOUCHI: Objection to form. 2 THE WITNESS: But not in California. 3 BY MR. TAKENOUCHI: 4 Q Except in California. 5 MR. OLSON: Same objection. 6 BY MR. TAKENOUCHI: 7 Q Go ahead and put that aside. 8 If you could pull out Bell 27. And I 9 believe you testified this was a chapter of a book 10 you wrote -- 11 A Yes. 12 Q -- you wrote this chapter in a book? 13 A Yes. 14 Q Was this book publicly available? 15 A Oh, yes, if you could afford it. 16 Q Did you write this for any particular 17 client? 18 A No. This is an exercise that those of us 19 in academia, the need to publish or perish, you 20 know. Occasionally you write a book or chapter of a 21 book and the -- the predecessor -- I think this was 22 the 5th edition of this book, by the way. It was 23 started by another individual back in the '70s, I 24 think, and then this is the 5th edition. This is 25 the first edition that had any pictures -- is there</p>

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<p style="text-align: right;">276</p> <p>1 any pictures in that? I don't see any pictures.</p> <p>2 Anyway, this is a 1,400 page book. The</p> <p>3 previous one, I think, was around 7- or 800. And we</p> <p>4 brought in 18 authors, total, including myself, as</p> <p>5 opposed to one.</p> <p>6 And so what we were trying to do here is be</p> <p>7 more comprehensive, get more opinions, more subject</p> <p>8 specialization. I think we have 52 chapters, each</p> <p>9 one on a different subject.</p> <p>10 Q So this was an academic exercise as opposed</p> <p>11 to something you wrote for a particular entity or</p> <p>12 person; is that correct?</p> <p>13 MR. OLSON: Objection to form.</p> <p>14 THE WITNESS: It was a continuation of a</p> <p>15 book that had been in existence for 30 years or so.</p> <p>16 So when the publisher comes to you and</p> <p>17 says, "Will you update this book?" you try to fight</p> <p>18 that as much as you can, and then finally you agree,</p> <p>19 but you're going to do it in a different way, you're</p> <p>20 going to change the name of the book, you're going</p> <p>21 to get your coauthors, you're going to make the book</p> <p>22 bigger and more comprehensive. And as editor --</p> <p>23 senior editor, all those differentiations were put</p> <p>24 into place.</p> <p>25 BY MR. TAKENOUCHI:</p>	<p style="text-align: right;">278</p> <p>1 A He sells them to a -- either he has his own</p> <p>2 processing plant or he sells them to the distributor</p> <p>3 who does the processing.</p> <p>4 So you have to tack on the processing costs</p> <p>5 to this price. This is the price I'm most familiar</p> <p>6 with. It is called the production price. It does</p> <p>7 not include processing, it does not include an egg</p> <p>8 carton, it does not include transportation, it does</p> <p>9 not include shelving or retailing. So these other</p> <p>10 costs that I just tried to list here that can go all</p> <p>11 the way to specialty eggs.</p> <p>12 Q Now, I think you said the focus of your</p> <p>13 work was on the farmer, the producer price?</p> <p>14 A That's right.</p> <p>15 Q Did you -- strike that.</p> <p>16 A Uh-huh.</p> <p>17 Q Go ahead and put that aside, and let's talk</p> <p>18 about Bell 22, Bates number BELL-D-28597.</p> <p>19 Do you remember being questioned about</p> <p>20 this?</p> <p>21 A Today or yesterday, yes.</p> <p>22 Q Okay. Now, at the time when the Scientific</p> <p>23 Advisory Committee was looking at feeder space</p> <p>24 issues, how old was the research that the committee</p> <p>25 was using in doing its analysis?</p>
<p style="text-align: right;">277</p> <p>1 Q I think when you were asked earlier about</p> <p>2 this particular book and some of the phrases in</p> <p>3 here, you talked about pricing.</p> <p>4 Are there different levels of pricing, you</p> <p>5 said?</p> <p>6 A Absolutely.</p> <p>7 Q Okay. And are those different levels?</p> <p>8 A Way more than you can add up. You have to</p> <p>9 read one of my papers on pricing.</p> <p>10 Q Are you trying to sell me a paper?</p> <p>11 A No. There is an encyclopedia that you can</p> <p>12 read the whole chapter on pricing that I wrote and</p> <p>13 one on marketing.</p> <p>14 But, anyway, they start with the base price</p> <p>15 that the farmer gets for given egg size, weight. So</p> <p>16 you start off with a peewee egg, which is the</p> <p>17 smallest egg we sell. At the farm level that price</p> <p>18 may be 10, 15 cents a dozen. But you don't sell</p> <p>19 them to the consumer, you sell them bulk or</p> <p>20 whatever.</p> <p>21 And then you get six sizes altogether, all</p> <p>22 the way up to extra large -- jumbo, pardon me. Each</p> <p>23 one of those has a different price, you get more</p> <p>24 weight with each one. That's at the farm level.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">279</p> <p>1 A How old was the research --</p> <p>2 Q The research.</p> <p>3 A -- that they were considering?</p> <p>4 I think my paper, written in '76 or so,</p> <p>5 you'd have to go to the bibliography to find out.</p> <p>6 But that was the one that stimulated the discussion</p> <p>7 of more feeder space systems. It had a biological</p> <p>8 benefit, performance wise and economic, but the</p> <p>9 industry went so far with their adoption of this</p> <p>10 procedure and we went all the way to 6 inches, by</p> <p>11 the way, and then they started to experience it, and</p> <p>12 most of the experience was positive on the</p> <p>13 biological.</p> <p>14 But when they started to pencil it out</p> <p>15 economically, they said, well I have to buy 2 more</p> <p>16 inches of feeder space, that's feed trough. That</p> <p>17 costs money.</p> <p>18 Q I'm just focusing on --</p> <p>19 MR. OLSON: Hold on. Were you finished?</p> <p>20 THE WITNESS: What do you want?</p> <p>21 MR. OLSON: Oh, I thought you were still</p> <p>22 continuing with your answer.</p> <p>23 THE WITNESS: Well, I was.</p> <p>24 MR. OLSON: I thought so too.</p> <p>25 BY MR. TAKENOUCHI:</p>

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<p>1 Q Just focusing on this period in 2004, if I</p> <p>2 could refer you to that heading "Scientific Studies</p> <p>3 on Feeder Space" --</p> <p>4 A Yes, go ahead.</p> <p>5 Q -- do you see that sentence in the middle</p> <p>6 there, "They confirmed that most of the research was</p> <p>7 more than 20 years old"?</p> <p>8 A Yes.</p> <p>9 Q Do you see that?</p> <p>10 A Yes.</p> <p>11 Q So it said, "They confirmed that most of</p> <p>12 the research was more than 20 years old and that</p> <p>13 genetics and production practices had certainly</p> <p>14 changed since the last research project."</p> <p>15 So at this point in 2004, was the research</p> <p>16 on feeder space outdated?</p> <p>17 MR. OLSON: Objection to form.</p> <p>18 THE WITNESS: I would have problems with</p> <p>19 this no research for 20 years, something like that.</p> <p>20 "They confirmed most of the research was more than</p> <p>21 20 years old."</p> <p>22 I have files of research after my original</p> <p>23 research that confirmed our results, and I don't</p> <p>24 consider that none.</p> <p>25 BY MR. TAKENOUCI:</p>	<p>1 and so on.</p> <p>2 And all these factors -- the feeder space,</p> <p>3 the water, the height, the depth, the shape -- this</p> <p>4 is a regular cage shaped like that. The reverse</p> <p>5 cage is shaped like that. And so the feeder trough</p> <p>6 is here, now it's here. So shape is a big important</p> <p>7 thing.</p> <p>8 So three or four or five elements of</p> <p>9 describing a cage, and they all fit together. They</p> <p>10 all have a role.</p> <p>11 Q You're talking about cage configuration and</p> <p>12 design, right?</p> <p>13 A Go ahead.</p> <p>14 Q But I guess what I'm asking about is the</p> <p>15 distinction between hen density and I guess cage</p> <p>16 density versus the hen population.</p> <p>17 Are those different concepts?</p> <p>18 A Well, the first two that you mentioned, hen</p> <p>19 density and cage density, I think would be the</p> <p>20 same --</p> <p>21 Q Okay.</p> <p>22 A -- they are just synonymous.</p> <p>23 The population is a totally different</p> <p>24 thing. It is how many birds, not in one cage.</p> <p>25 The rest of it has to do with how many</p>
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<p>1 Q Okay. And your original research was 1976;</p> <p>2 is that right?</p> <p>3 A I think that's the date I had. It's in all</p> <p>4 of my documents someplace.</p> <p>5 Q I think you testified yesterday about hen</p> <p>6 density.</p> <p>7 A Yes.</p> <p>8 Q And I can't remember if you testified about</p> <p>9 hen population.</p> <p>10 Do you remember that?</p> <p>11 A I'm sure we said something about total hen</p> <p>12 numbers versus birds in a cage, I'm sure we talked</p> <p>13 about that.</p> <p>14 Q So what's the difference, if there is any,</p> <p>15 between hen density and hen population?</p> <p>16 A Well, hen population you are talking about</p> <p>17 a farm or a state or a region or a country. That's</p> <p>18 the total numbers of birds in that definition.</p> <p>19 Density, it usually refers to in a given</p> <p>20 unit or given enclosure -- enclosure is probably a</p> <p>21 better word. Humane people don't like the word</p> <p>22 cages, by the way. And cages have been around since</p> <p>23 the '30s, the 1930s.</p> <p>24 But anyway, density refers to how much</p> <p>25 space they have and how many birds are in that unit</p>	<p>1 birds you put in here and how dense are they and the</p> <p>2 space, whatever the size is, that's an enclosure.</p> <p>3 It could be as few as three or four birds,</p> <p>4 it could be as many as 50 to a hundred. But that's</p> <p>5 density.</p> <p>6 But population is how many of these do you</p> <p>7 have all over the place. And you are counting for</p> <p>8 five birds here, five birds there, five birds there,</p> <p>9 five birds there, all over the United States.</p> <p>10 Q Now, I think you testified earlier about</p> <p>11 some of the benefits of giving hens more space?</p> <p>12 A Yes.</p> <p>13 Q And I think you said something about</p> <p>14 productivity.</p> <p>15 Do you remember that?</p> <p>16 A Productivity means eggs.</p> <p>17 Q Okay. So how does giving hens more space</p> <p>18 result in more eggs?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 THE WITNESS: It is their response to being</p> <p>21 crowded. What's the total length of time? Normally</p> <p>22 there is good evidence in the 50- to 80-square-inch</p> <p>23 range per bird that there is a step-by-step</p> <p>24 regression relationship in that question, so -- have</p> <p>25 I answered your question yet or do you want to</p>

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<p>1 restate it?</p> <p>2 BY MR. TAKENOUCHI:</p> <p>3 Q Okay. I'll restate it.</p> <p>4 Does giving hens more space result in more</p> <p>5 eggs?</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. TAKENOUCHI:</p> <p>9 Q And how, exactly, does it --</p> <p>10 A How does it happen?</p> <p>11 Q Yes.</p> <p>12 A It is part of the peck order, which is a</p> <p>13 sociological phenomena, that relates to chicken or</p> <p>14 people, or whatever. It relates to access to the</p> <p>15 feed and to the water. It relates to -- I think</p> <p>16 that's enough.</p> <p>17 Q So let me refer you to Bell 9. I think it</p> <p>18 was yesterday.</p> <p>19 The Bates number is BELL 4041, and this is</p> <p>20 a December 22nd, 1999 e-mail.</p> <p>21 I want to draw your attention to the second</p> <p>22 page here.</p> <p>23 A Second page?</p> <p>24 Q You testified to some of this yesterday.</p> <p>25 But that second-to-the-last paragraph there, and the</p>	<p>1 A Yes.</p> <p>2 Q Do you think that's when you produced this</p> <p>3 or created this slide --</p> <p>4 MR. OLSON: Objection to form.</p> <p>5 THE WITNESS: It looks like I didn't -- oh,</p> <p>6 here it is up here, in the title it says 1992.</p> <p>7 January 1992. Down here it was just substantiation</p> <p>8 of the date. Up at the top corner you'll see a</p> <p>9 handwritten 92/12.</p> <p>10 BY MR. TAKENOUCHI:</p> <p>11 Q So do you think you wrote this in 1992?</p> <p>12 A Well, it looks like 12 would be December,</p> <p>13 maybe, of '92. I don't know what the 12 is. I</p> <p>14 really don't. They have January '92 and over here</p> <p>15 you've got 12. I don't know what the difference is.</p> <p>16 Q Do you think you wrote this in 1992?</p> <p>17 A Yes, 1992 is definitely --</p> <p>18 Q So 1992 was 21 years ago, roughly?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 BY MR. TAKENOUCHI:</p> <p>21 Q Do you remember creating this particular</p> <p>22 slide?</p> <p>23 A I gave many talks on this subject. I gave</p> <p>24 over 450 talks in my career. It is very difficult</p> <p>25 to remember which one is which.</p>
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<p>1 last sentence of that paragraph, it says, "What</p> <p>2 would be real exciting would be to see entire new</p> <p>3 complexes built on these principles."</p> <p>4 Do you remember what you meant by that?</p> <p>5 A Sure. Yeah, it's basically -- it would be</p> <p>6 exciting if everybody listened to me and did what I</p> <p>7 said, that would be the most exciting things. So if</p> <p>8 I've said I've done research on reverse cages, for</p> <p>9 example, or molting or any of these things, if</p> <p>10 everybody read it, everybody followed it through,</p> <p>11 that would be very exciting to me.</p> <p>12 Q Go ahead and put that away. I understand</p> <p>13 what you're saying.</p> <p>14 A You understand what I'm saying?</p> <p>15 Q Let's look at Bell 2 for a second. This is</p> <p>16 Bates number BELL-D-31284. We looked at this</p> <p>17 yesterday.</p> <p>18 A Got it. Go ahead.</p> <p>19 Q It is a slide. It looks like it is</p> <p>20 PowerPoint or something.</p> <p>21 A I've given the slide talks all my life, so</p> <p>22 I suppose so -- it looks like PowerPoint.</p> <p>23 Q Okay. So the first page there has a date</p> <p>24 of 1992.</p> <p>25 Do you see that?</p>	<p>1 This is in my own documentation at my</p> <p>2 house.</p> <p>3 Q Okay. Do you remember sitting down 21</p> <p>4 years ago and creating this?</p> <p>5 A No, no. This could have been in any</p> <p>6 location, and we'll assume '92 is correct.</p> <p>7 Q Do you remember giving this particular</p> <p>8 presentation or copy of this to any particular</p> <p>9 person?</p> <p>10 A I might have given this to five different</p> <p>11 groups, so I don't know right today what group this</p> <p>12 was given to first, second, third, fourth or fifth.</p> <p>13 Q Let's say there were five, do you know</p> <p>14 which five groups you may have given it to?</p> <p>15 A I do --</p> <p>16 MR. OLSON: Hold on. Objection to form.</p> <p>17 THE WITNESS: I have it in my records every</p> <p>18 single talk I've ever given at my house. It does</p> <p>19 not say it on this document.</p> <p>20 BY MR. TAKENOUCHI:</p> <p>21 Q So sitting here today you don't have</p> <p>22 independent recollection who you may have given this</p> <p>23 to?</p> <p>24 A I have no idea.</p> <p>25 Q Is it possible you never gave this to</p>

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<p>1 anyone at UEP?</p> <p>2 MR. OLSON: Objection to form.</p> <p>3 THE WITNESS: Say that again.</p> <p>4 BY MR. TAKENOUCHI:</p> <p>5 Q Is it possible you never gave this slide to</p> <p>6 anyone at UEP?</p> <p>7 A It's possible, it's possible.</p> <p>8 Q So apologies for going backwards, but let's</p> <p>9 look at Bell 21 and also Bell 22. If you could have</p> <p>10 those two in front of you?</p> <p>11 A 21 and 22.</p> <p>12 Q These are minutes of, it looks like,</p> <p>13 different meetings in 2004?</p> <p>14 A Yes.</p> <p>15 Q If you look in the bottom right of both</p> <p>16 these documents there is a Bates number which is</p> <p>17 fancy speak for a numbering system to show who</p> <p>18 produced it. And these are both produced by United</p> <p>19 Egg.</p> <p>20 Do you see that?</p> <p>21 A They were provided by United Egg?</p> <p>22 Q Yes, United Egg.</p> <p>23 Do you see that?</p> <p>24 A Go ahead.</p> <p>25 Q I think you testified before you may have</p>	<p>1 question --</p> <p>2 A It is? Where is my name? There it is.</p> <p>3 Okay.</p> <p>4 Q Sitting here today, do you remember getting</p> <p>5 a copy of these minutes?</p> <p>6 A No, I don't remember specifically getting</p> <p>7 stacks of paper, no.</p> <p>8 Q And you wouldn't have created these</p> <p>9 minutes, right?</p> <p>10 A I did not create it.</p> <p>11 Q Okay. And now going to Bell 22 --</p> <p>12 A May we stay with 21 for a minute?</p> <p>13 Q Sure.</p> <p>14 A If this is nine years ago -- is that right?</p> <p>15 Nine years ago? -- I believe I was asked to give a</p> <p>16 talk on a -- on a subject, and I don't want to tell</p> <p>17 you the subject because I'm not sure, but I think</p> <p>18 that's why I was invited in the first place, not for</p> <p>19 any other reason.</p> <p>20 Q Okay. So looking at Bell 22 now --</p> <p>21 A Uh-huh.</p> <p>22 Q -- now again, this is Bates number</p> <p>23 UE294465 --</p> <p>24 A Yes.</p> <p>25 Q -- sitting here today do you remember</p>
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<p>1 attended these meetings?</p> <p>2 A I did. I think my name is on the list.</p> <p>3 Q Okay. It's on the list.</p> <p>4 Did you prepare these minutes?</p> <p>5 A No.</p> <p>6 Q Do you remember ever receiving a copy of</p> <p>7 these minutes?</p> <p>8 A Well, I should have, as a member of the</p> <p>9 committee. I'm sure -- I'm sure -- I don't know</p> <p>10 whether I could find them today, but I think they</p> <p>11 usually have the courtesy of giving everyone who</p> <p>12 attended a copy of the minutes, yes.</p> <p>13 Q So I think you're referring to Bell 22.</p> <p>14 Maybe let's put that aside for now.</p> <p>15 Looking at Bell 21 --</p> <p>16 A Okay.</p> <p>17 Q -- it is the Shell Egg Marketing Committee</p> <p>18 minutes for October 20, 2004.</p> <p>19 A Okay.</p> <p>20 Q So this is not the Scientific Advisory</p> <p>21 Committee?</p> <p>22 A It is not the Scientific Advisory, and I</p> <p>23 don't see my name on it and, therefore, I guess I</p> <p>24 wasn't --</p> <p>25 Q Well, your name is on here, but here is my</p>	<p>1 receiving these particular minutes?</p> <p>2 A Do I remember receiving these minutes? I</p> <p>3 can't say. I do not recall this specific, but I</p> <p>4 would expect 99 percent chance that I did.</p> <p>5 Q So sitting here today, do you have any</p> <p>6 independent recollection, other than just reading</p> <p>7 the document about what happened at this meeting?</p> <p>8 A I was in Chicago --</p> <p>9 Q Other than reading the document, do</p> <p>10 you remember the --</p> <p>11 MR. OLSON: Let's have him just answer the</p> <p>12 question.</p> <p>13 MR. TAKENOUCHI: Is that the objection,</p> <p>14 Counsel? You can object if you'd like.</p> <p>15 MR. OLSON: Yes, it is an objection. You</p> <p>16 are interrupting him when he gives an answer you</p> <p>17 don't like.</p> <p>18 BY MR. TAKENOUCHI:</p> <p>19 Q Other than reading the document, do you</p> <p>20 have any independent recollection of what happened</p> <p>21 at this meeting in 2004, other than reading the</p> <p>22 document?</p> <p>23 MR. OLSON: And he started to say, "I was</p> <p>24 in Chicago."</p> <p>25 THE WITNESS: All I can recall is that we</p>

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<p>1 had a meeting of this group in Chicago somewhere in 2 that time period. But like most meetings, I don't 3 recall what they said. 4 BY MR. TAKENOUCHI: 5 Q Okay. So sitting here today you don't 6 recall what happened at this meeting? 7 A No. 8 MR. GODLSTEIN: You mean correct? You said 9 "No," and your answer may be ambiguous given the way 10 the question is asked. 11 THE WITNESS: You're right, you're right, 12 you're right. So I do not remember specifically 13 what went on at this meetings except from these 14 minutes. 15 BY MR. TAKENOUCHI: 16 Q Let's go to Bell 3, if you could. 17 A Which one? 18 Q Bell 3. 19 A 3? 20 Q And, actually, let's pull out Bell 11, too, 21 while we're at it. 22 So focusing -- let's focus on Bell 11 to 23 start off with. 24 A That's the wrong one. 11? 25 Q Yes, September 2000, "Recommendations for</p>	<p>1 I think Barrie Wilcox probably was 2 president at that time, and we know about Gene. 3 Q When you say "president," president of 4 what? 5 A President of United Egg Producers. 6 Q Okay. 7 A They have a hired, full-time general 8 manager, Al Pope and Gene Gregory. I don't see his 9 title here, but it's a hired person. 10 Q Were Wilcox and Gregory voting members of 11 the Scientific Advisory Committee? 12 A No, no, neither one were voting members. 13 MR. OLSON: Objection to form. 14 BY MR. TAKENOUCHI: 15 Q Let me restate the question. If you could 16 let me finish -- 17 A I got your question. 18 Q No, I got you. You're getting ahead of me. 19 Let me finish just for the record. 20 A Go ahead. 21 Q Were Barrie Wilcox and Gene Gregory voting 22 members of the Scientific Advisory Committee? 23 MR. OLSON: Objection to form. 24 THE WITNESS: No. 25 BY MR. TAKENOUCHI:</p>
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<p>1 UEP Animal Welfare Guidelines." 2 A Yes. 3 Q Do you remember being asked about this 4 yesterday? 5 A Yes. 6 Q I want to direct your attention to the 7 third page in this document. 8 A Third page? 9 Q It is the one that has -- 10 A The list? 11 Q Yes, the list. 12 A Go ahead. 13 Q Now, at the bottom of this list after 14 Dr. Janice Swanson's name and her affiliation -- 15 A Yes. 16 Q -- there is a line that says "Support." 17 A Yes. 18 Q And then it lists two names. 19 A Yes. 20 Q Do you know what "support" meant? 21 A If we have any questions that they could 22 help us with. We were independent as far as the 23 welfare issues. They were there to listen and I 24 suppose to report back to their members, what have 25 you.</p>	<p>1 Q Now, referring you to Bell Number 3 -- 2 A 3? 3 Q -- which is the United Voices newsletter. 4 A I got it. 5 Q Do you see how there is a list on that 6 first page of members of the committee? 7 A Yes, yes. 8 Q Okay. So it shows "Gene Gregory's - UEP 9 Staff Support." 10 Do you see that? 11 A Yes. 12 Q It doesn't list Barrie Wilcox -- 13 A Yes, it does, it doesn't list under "Staff 14 Support." I guess it is more important that he's 15 got his own farm -- 16 Q Sure. But was Wilcox a voting member of 17 the -- 18 A No. 19 Q -- Scientific Advisory Committee? 20 MR. OLSON: Objection to form. 21 THE WITNESS: Excuse me. 22 No. 23 BY MR. TAKENOUCHI: 24 Q Just to clean it up, was Barrie Wilcox a 25 member of the Scientific Advisory Committee --</p>

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<p>1 MR. OLSON: Objection to form.</p> <p>2 BY MR. TAKENOUCHI:</p> <p>3 Q -- a voting member?</p> <p>4 A No.</p> <p>5 Q So go ahead and put those to the side.</p> <p>6 A You'll note the names are slightly</p> <p>7 different on the two lists.</p> <p>8 Q Okay. Yes, thank you.</p> <p>9 Let's look at Bell 13.</p> <p>10 A 13.</p> <p>11 Q This is the economic consultant agreement.</p> <p>12 A Oh.</p> <p>13 Q The Bates is UE 790540.</p> <p>14 A Okay.</p> <p>15 Q Now, this agreement on that second</p> <p>16 paragraph with the numbers, actually --</p> <p>17 A Yes.</p> <p>18 Q -- there's four numbers there --</p> <p>19 A Yes.</p> <p>20 Q -- what are you listing there? What's</p> <p>21 being listed there?</p> <p>22 A These are all --</p> <p>23 MR. OLSON: Objection -- objection to form.</p> <p>24 THE WITNESS: These are all newsletters. I</p> <p>25 do not see the memo in there. It might have been</p>	<p>1 BY MR. TAKENOUCHI:</p> <p>2 Q So your -- so this consultant agreement</p> <p>3 lists those things, those reports you just</p> <p>4 mentioned.</p> <p>5 Did your consultant agreement with UEP</p> <p>6 include compensation for your service on the</p> <p>7 Scientific Advisory Committee?</p> <p>8 A No. I was on a retainer for just my time.</p> <p>9 I think I said earlier that I received expenses. I</p> <p>10 don't recall ever receiving an honorarium or a</p> <p>11 special check or anything like that.</p> <p>12 So it was my -- it was assumed that I would</p> <p>13 attend the committee meeting, that's why they wanted</p> <p>14 me on there in the first place.</p> <p>15 And that was just part of my regular</p> <p>16 activity.</p> <p>17 Q Okay. You mean part of your regular</p> <p>18 activities was to serve on the Scientific Advisory</p> <p>19 Committee?</p> <p>20 MR. OLSON: Objection to form.</p> <p>21 THE WITNESS: And to -- let me see how you</p> <p>22 said that.</p> <p>23 BY MR. TAKENOUCHI:</p> <p>24 Q I'll withdraw that and clean it up a little</p> <p>25 bit.</p>
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<p>1 added later. The Egg Economics Update went back to</p> <p>2 about 1983, I believe. It started out as a weekly,</p> <p>3 they became a monthly.</p> <p>4 The U.S. Monthly Flock Projection was an</p> <p>5 attempt to take the statistics that the USDA</p> <p>6 provided and make a projection of how many layers</p> <p>7 that would result in for the next -- it could be as</p> <p>8 long as two years.</p> <p>9 The next one is "Statistical," that's just</p> <p>10 a bunch of tables and graphs from a variety of</p> <p>11 sources, not just the USDA, but a variety of</p> <p>12 sources.</p> <p>13 The last one, "Regional Egg Production Cost</p> <p>14 Estimates," that would involve -- it says feed is a</p> <p>15 big cost. We would get -- we would get cost</p> <p>16 estimates from the industry on either finished feed</p> <p>17 for a long number of years, we did it that way, by</p> <p>18 sampling feed mills, and the emphasis was</p> <p>19 California.</p> <p>20 And then later on we started to synthesis</p> <p>21 feed costs by looking at the ingredients and the</p> <p>22 formula of the feed.</p> <p>23 So those are the four basic things that are</p> <p>24 still being carried on today, and they started as</p> <p>25 much as 20 to 30 years ago.</p>	<p>1 A Okay.</p> <p>2 Q I'm just focusing now on the task you</p> <p>3 agreed to do as part of your economic consultant</p> <p>4 agreement.</p> <p>5 A Yes.</p> <p>6 Q And try to differentiate that from the</p> <p>7 tasks outside the agreement.</p> <p>8 So was the service on the Scientific</p> <p>9 Advisory Committee part of this agreement or was it</p> <p>10 something outside of this agreement?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: No, the task on the</p> <p>13 Scientific Advisory Committee, I guess, started in</p> <p>14 '99, right?</p> <p>15 This agreement here is dated 2001. That</p> <p>16 coincides with my retirement period. And I</p> <p>17 continued to do these newsletters through Iowa State</p> <p>18 University, counterpart -- the industry needs this</p> <p>19 information, but the lawsuits and everything going</p> <p>20 on have prevented UEP from continuing this type of</p> <p>21 activity, statistical activity, pricing and so on,</p> <p>22 cost of production.</p> <p>23 So now it's done at the Egg Industry Center</p> <p>24 at Iowa State University, with a fellow editor, and</p> <p>25 it is financed by the American Egg Board. And I</p>

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<p>1 never did require financing when I did it, but they 2 make things bigger and better. 3 But -- so it's continuing because the 4 industry said without this kind of information we'd 5 be lost. 6 BY MR. TAKENOUCHI: 7 Q And that was the information that you 8 agreed to -- 9 A Those things. 10 Q And those things being this list here on 11 this economic consultant agreement? 12 MR. OLSON: Objection to form. 13 THE WITNESS: Yes. 14 MR. TAKENOUCHI: Okay. 15 Q The transcript doesn't pick up -- 16 A I'm being bad. 17 Q That's all right, that's all right. We'll 18 take care of it. 19 So, again, I just wanted to understand the 20 distinction here and understand whether -- whether 21 the services you were providing pursuant to this 22 agreement that are listed here -- correct? 23 A Uh-huh. 24 Q Now, the Scientific Advisory Committee is 25 not listed on this agreement, correct?</p>	<p>1 Advisory Committee, was I ever paid for that -- 2 BY MR. TAKENOUCHI: 3 Q Yes. 4 A -- separately? No. 5 Q Let's put that aside and look at Bell 6 Exhibit 4. 7 MR. OLSON: Do you have an estimate how 8 much longer we're going here? 9 MR. TAKENOUCHI: I do not. 10 THE WITNESS: Okay. 11 BY MR. TAKENOUCHI: 12 Q So I think this is a document you were 13 questioned about yesterday. This is a 1994 Egg 14 Economics Update. 15 Do you see that? 16 A Yes. 17 Q Now, a couple things I'd like to ask you 18 about this document. 19 If you look at the upper left of the first 20 page here -- 21 A Go ahead. 22 Q -- it says "Cooperative Extension"? 23 A Yes. 24 Q What does that refer to? 25 MR. OLSON: Objection to form, asked and</p>
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<p>1 MR. OLSON: Objection to form. 2 THE WITNESS: The fourth, fifth 3 paragraph -- second one from the bottom and the 4 bottom one, it talks about special events or special 5 projects or attending meetings, and it is spelled 6 out there that we'd even negotiate compensation for 7 that extra time. That's all extra time. 8 BY MR. TAKENOUCHI: 9 Q Were you ever paid, other than expenses and 10 lodging, for your services on the Scientific 11 Advisory Committee? 12 MR. OLSON: Objection to form. 13 THE WITNESS: I don't think so. Just the 14 travel expenses and my ongoing relationship -- 15 ongoing agreement. 16 BY MR. TAKENOUCHI: 17 Q That answer was a little unclear to me. 18 A You want more? 19 Q Okay. Other than expenses and lodging, 20 taking that out of the equation -- 21 A Okay, okay. 22 Q -- were you ever paid for your services on 23 the Scientific Advisory Committee? 24 MR. OLSON: Objection to form. 25 THE WITNESS: As a member of the Scientific</p>	<p>1 answered. 2 THE WITNESS: You want the answer? 3 BY MR. TAKENOUCHI: 4 Q Yes. 5 A You'll notice there's two things on the 6 upper line, "Cooperative Extension," "University of 7 California." It's a part, a department, a group of 8 people who do extension work, which means you extend 9 the university from the campus, away from the 10 campus. 11 And cooperative extension, originally it 12 was all agriculture, all agriculture. 13 It now -- it also at some point in time 14 picked up the 4H -- our 4H program for the youth 15 related to agriculture, also home advisors, which is 16 the homemaker. 17 And I believe around this time period we 18 might have had a staff of 4- to 500 statewide. 19 And there is an extension service -- 20 cooperative extension in every land grant university 21 state. 22 Q So let me break it up in two parts here. 23 What is a land grant university? 24 A Land grant is where the state got money 25 from the federal government to establish a</p>

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<p>1 University of California or Arizona State</p> <p>2 University, or whatever, and that was an educational</p> <p>3 format. It included three things, research, on-site</p> <p>4 teaching, like UC Riverside here, and the third</p> <p>5 would be cooperative extension.</p> <p>6 Now we also have university extension,</p> <p>7 which is night classes --</p> <p>8 THE VIDEOGRAPHER: We have to go off the</p> <p>9 record. The power shut down.</p> <p>10 MR. TAKENOUCHI: Okay.</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 approximately 2:39 p.m., and we're going off the</p> <p>13 record.</p> <p>14 (Recess.)</p> <p>15 THE VIDEOGRAPHER: This marks the beginning</p> <p>16 of media number 3 in the video deposition of</p> <p>17 Don Bell, Volume II.</p> <p>18 The time is approximately 3:06 p.m., and</p> <p>19 we're back on the record.</p> <p>20 And just to let you know, we lost power for</p> <p>21 a few minutes, and we may have lost the last</p> <p>22 question and answer, so I think we're going to</p> <p>23 repeat the last question and answer.</p> <p>24 MR. TAKENOUCHI: For the folks on the</p> <p>25 phone, we're just going to go back to the last full</p>	<p>1 which they could develop their institution. Well,</p> <p>2 it's only one per state.</p> <p>3 Go ahead.</p> <p>4 Q So what's the relationship between the</p> <p>5 cooperative extension and the land grant university?</p> <p>6 A A land grant university has three basic</p> <p>7 roles. One is on-site teaching, and we think in</p> <p>8 terms of younger students. We have a research role,</p> <p>9 which is a major role in every kind of field. The</p> <p>10 third is extension, which is -- follows all the</p> <p>11 others over time and so on, and it's a matter of</p> <p>12 taking what's at the university campus itself to all</p> <p>13 corners of the state and -- with an emphasis in</p> <p>14 agriculture, but not exclusively.</p> <p>15 Q And what funds the cooperative extension?</p> <p>16 Where does the money come from?</p> <p>17 A Well, it varies, but it usually is</p> <p>18 considered to come from federal sources, the county</p> <p>19 that you're in for the local program and for the</p> <p>20 state of California -- for the University of</p> <p>21 California. My salary, for example, comes from --</p> <p>22 originally from the State of California to the</p> <p>23 University of California.</p> <p>24 The local expenses of maintaining an office</p> <p>25 and staff is usually the county's. The normal</p>
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<p>1 answer we have on video to recap it so the witness</p> <p>2 has it in context and then I'll just reask the</p> <p>3 question that got interrupted by the power outage.</p> <p>4 So if the court reporter could read back</p> <p>5 the response to --</p> <p>6 MR. OLSON: Didn't we get an answer to what</p> <p>7 a land grant university was?</p> <p>8 MR. TAKENOUCHI: So the tape got cut off.</p> <p>9 So what do you want?</p> <p>10 MR. OLSON: I'll stipulate to what a land</p> <p>11 grant university is.</p> <p>12 MR. TAKENOUCHI: What is a land grant</p> <p>13 university, Steig?</p> <p>14 MR. OLSON: What do you think it is?</p> <p>15 Whatever it says in the dictionary, we'll stipulate</p> <p>16 to.</p> <p>17 MR. TAKENOUCHI: Could you read back the</p> <p>18 last full answer he had -- question and answer.</p> <p>19 I'll just reask it.</p> <p>20 Q Mr. Bell, what is a land grant university?</p> <p>21 A A land grant university originated in 1859,</p> <p>22 or something of that type. It established an</p> <p>23 institution of higher learning for each state.</p> <p>24 It was called a land grant because the</p> <p>25 federal government provided land for each state of</p>	<p>1 breakdown is something like 25/25/50 percent. So</p> <p>2 the University of California through the -- the</p> <p>3 State of California through the University of</p> <p>4 California would be the highest portion of that,</p> <p>5 about half, and tied directly to the USDA and grants</p> <p>6 to work on universal problems of the entire country.</p> <p>7 Q So just so I understand, you said 25/25/50.</p> <p>8 50 was California, what is the other 25/25?</p> <p>9 A County and federal would be each about 25.</p> <p>10 Q And what's the source of the federal funds?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: Your taxes.</p> <p>13 BY MR. TAKENOUCHI:</p> <p>14 Q I guess what egg does it come out of? Does</p> <p>15 it come out of the Department of Agriculture or --</p> <p>16 A The U.S. Department of Agriculture uses</p> <p>17 funds to do this, this, this and this, and part of</p> <p>18 it has to do with research at the local level.</p> <p>19 And I can't give you the exact breakdown of</p> <p>20 everything that they do, but there are all kinds of</p> <p>21 national programs of which the nation, as a whole,</p> <p>22 supports the local expenses.</p> <p>23 Q Who was your employer before 2001?</p> <p>24 A University of California.</p> <p>25 Q Okay. So was the cooperative extension --</p>

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<p>1 A Always there.</p> <p>2 Q Okay. But was the cooperative extension</p> <p>3 your employer too or was it --</p> <p>4 A The cooperative extension is part of the</p> <p>5 University of California.</p> <p>6 Q Okay.</p> <p>7 A My immediate supervisor would be a</p> <p>8 University of California person in an administrative</p> <p>9 role, each of the offices of which we have 50 or</p> <p>10 more.</p> <p>11 Q And what was your title?</p> <p>12 A It's been two different titles through my</p> <p>13 career. It started out as a farm advisor in a given</p> <p>14 county. Then it became a multi-county position.</p> <p>15 Then it went back to a one-county position. And</p> <p>16 then it became statewide poultry specialist.</p> <p>17 Q So during your employment with the</p> <p>18 cooperative extension, what were you supposed to do?</p> <p>19 What were the goals of your job?</p> <p>20 A Education from a technological standpoint,</p> <p>21 solution of problems of our farmers. When I started</p> <p>22 out, we had 400 egg farmers in one county, so in the</p> <p>23 state we had over 2,000.</p> <p>24 And so those are the people we worked with.</p> <p>25 Some were very good cooperators, sought you out,</p>	<p>1 working with the egg producers. That's a major</p> <p>2 commodity in California. Why are you working on a</p> <p>3 particular project, economics? Because I've</p> <p>4 convinced my administrators that that's a very</p> <p>5 important subject for the egg industry, and so on.</p> <p>6 BY MR. TAKENOUCHI:</p> <p>7 Q And you talked about a write-up. What do</p> <p>8 you mean by a write-up?</p> <p>9 A I guess I said write-up.</p> <p>10 Write-up would be the proposal in the first</p> <p>11 place to do something and to redo -- continue it the</p> <p>12 second year and so on through whatever time period.</p> <p>13 And then the so what, the write-up would be so what.</p> <p>14 Q Would these be written reports you would</p> <p>15 distribute to someone?</p> <p>16 A They'd be mainly in-house. I didn't</p> <p>17 have -- some people have a committee of farmers that</p> <p>18 they communicate with in some way, around a table or</p> <p>19 report sharing or whatever it may be.</p> <p>20 I did so much extensive writing, as we've</p> <p>21 been pulling out here, that the flow of information</p> <p>22 is pretty well documented.</p> <p>23 Whether anybody looks at this particular</p> <p>24 newsletter and says, "Don, I don't think you should</p> <p>25 be doing that," no. You have pretty much control</p>
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<p>1 asked you problems, phoned you up, very close</p> <p>2 relationships. Others had nothing to do with you</p> <p>3 because they didn't think that the -- that the,</p> <p>4 quote unquote, government should be doing these</p> <p>5 kinds of things free, these are free services,</p> <p>6 sponsored by the University of California.</p> <p>7 Q So was there government oversight over what</p> <p>8 you did for the cooperative exchange -- or the</p> <p>9 cooperative extension?</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 THE WITNESS: I would say the federal</p> <p>12 government would look at the statewide programs,</p> <p>13 fund them or not. Probably funding or not is the</p> <p>14 way you control your programs. If you don't give</p> <p>15 them money, you're not going to have a program.</p> <p>16 Your supervisor, in my case, would be a</p> <p>17 regional director, and he would have -- each one</p> <p>18 would have more or less knowledge of what you're</p> <p>19 doing on a day-by-day basis.</p> <p>20 So there is a reporting system, of course,</p> <p>21 we have to report what we're doing.</p> <p>22 You shouldn't work into your write-up while</p> <p>23 you're doing it, how you're doing it, what's the</p> <p>24 industry payoff of what you're doing, why are you</p> <p>25 doing that, this question you asked, why are you</p>	<p>1 over what you do.</p> <p>2 Q Did any of your supervisors have access to</p> <p>3 the reports you did, like this Bell Number 4?</p> <p>4 A They all do, all my supervisors. You would</p> <p>5 usually only have one supervisor at a time, but</p> <p>6 there's a chain all the way up to the president of</p> <p>7 the university. He doesn't read many reports.</p> <p>8 Q Did you have any contact with the USDA</p> <p>9 during your time working for the cooperative</p> <p>10 extension?</p> <p>11 A Most of the hard data on a national basis</p> <p>12 comes from them or other agencies of the federal</p> <p>13 government. We also have state government. We do</p> <p>14 the same thing with them. We have access to their</p> <p>15 groups, agencies.</p> <p>16 Go ahead.</p> <p>17 Q Okay. So looking at this document, Bell</p> <p>18 Number 4, this is a 1994 Egg Economics Update.</p> <p>19 A Yes.</p> <p>20 Q And maybe you can explain this to me. I'm</p> <p>21 looking at the bottom of the first page there. Do</p> <p>22 you see in the very small type -- I apologize for</p> <p>23 that -- it says, "In accordance with applicable</p> <p>24 federal laws and university policy, University of</p> <p>25 California does not discriminate"?</p>

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<p>1 Do you see that language?</p> <p>2 A Yes.</p> <p>3 Q On the very bottom it says, "University of</p> <p>4 California and the United States Department of</p> <p>5 Agriculture cooperating."</p> <p>6 What does that mean?</p> <p>7 A That means they are sharing on the</p> <p>8 expenses. They don't list the county, because</p> <p>9 that's not required in this particular format.</p> <p>10 This is required on every document that we</p> <p>11 do, this particular statement. I don't think it's</p> <p>12 going to be on the e-mail, but on any kind of</p> <p>13 official publication they want to know who to blame</p> <p>14 and who not to discriminate against and so on.</p> <p>15 I'd rather say who we didn't</p> <p>16 discriminate -- who we did discriminate is a shorter</p> <p>17 list than who we don't discriminate. That's my</p> <p>18 personal view.</p> <p>19 Q So you were instructed that you had to put</p> <p>20 this disclaimer --</p> <p>21 A Absolutely.</p> <p>22 Q -- at the bottom of every report?</p> <p>23 A Yes.</p> <p>24 Q Now, in this period, 1994, were you on</p> <p>25 contract with UEP?</p>	<p>1 your clients, or whatever, that eventually the USDA</p> <p>2 people would come in and say that person is not</p> <p>3 doing what they are supposed to be doing. That</p> <p>4 would be their control -- ultimate control. I've</p> <p>5 never been involved in anybody questioning my</p> <p>6 program.</p> <p>7 BY MR. TAKENOUCHI:</p> <p>8 Q But did they have the ability at the USDA</p> <p>9 to question what you are doing?</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 THE WITNESS: I'm not going to comment on</p> <p>12 that because I don't know how the government works.</p> <p>13 BY MR. TAKENOUCHI:</p> <p>14 Q Most of us don't.</p> <p>15 But your understanding was that the USDA</p> <p>16 would have the ability to regulate what you're</p> <p>17 doing?</p> <p>18 MR. OLSON: Objection to form.</p> <p>19 BY MR. TAKENOUCHI:</p> <p>20 Q Is that correct?</p> <p>21 A Purely theoretical. Purely theoretical.</p> <p>22 The concern of this statement in here, it</p> <p>23 has to do that no one can be exempt from your</p> <p>24 services.</p> <p>25 Q Okay. And that was because there were</p>
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<p>1 A No, I don't -- I think we decided that we</p> <p>2 started that in 2001, didn't we, on contract?</p> <p>3 Q So 1994 --</p> <p>4 A Another document here.</p> <p>5 Q So in 1994 you were just working for the</p> <p>6 cooperative extension?</p> <p>7 A No, no -- yes, I was working for the</p> <p>8 cooperative extension, and the UEP relationship</p> <p>9 didn't start until -- what did we say, 2001?</p> <p>10 Q Yes.</p> <p>11 A Purely cooperative extension. My title</p> <p>12 was, at this point in time, poultry specialist.</p> <p>13 Q So looking at this report with the</p> <p>14 disclaimer at the bottom there, was this report a</p> <p>15 result of federal financing?</p> <p>16 MR. OLSON: Objection; form.</p> <p>17 THE WITNESS: Indirectly. Indirectly. You</p> <p>18 helped pay for it too, thank you.</p> <p>19 The fact that they may have had 25 percent</p> <p>20 participation in the University of California,</p> <p>21 period, it doesn't imply that 25 percent of my</p> <p>22 expenses, no. It may be a quarter of a percent.</p> <p>23 But, you know, that's a grand total. So the fact</p> <p>24 that it says USDA cooperating, I suppose if you</p> <p>25 started to get off base or you started to lie to</p>	<p>1 strings attached to getting federal funds and state</p> <p>2 funds?</p> <p>3 MR. OLSON: Objection to form.</p> <p>4 THE WITNESS: Well, they have the final</p> <p>5 say-so. If they don't get the funds, we're going to</p> <p>6 be 25 percent short of funds. So we follow all the</p> <p>7 national programs, don't we.</p> <p>8 If -- we were taking about sexual</p> <p>9 orientation here a long, long time ago.</p> <p>10 BY MR. TAKENOUCHI:</p> <p>11 Q I think we're a little far afield on that.</p> <p>12 A Is that far afield?</p> <p>13 Q I think for this discussion.</p> <p>14 A Go ahead.</p> <p>15 Q But -- so taking you back to 1994, was the</p> <p>16 USDA aware of these reports you were putting out?</p> <p>17 MR. OLSON: Objection form.</p> <p>18 THE WITNESS: This report.</p> <p>19 BY MR. TAKENOUCHI:</p> <p>20 Q The reports in general, was --</p> <p>21 A The reports in general?</p> <p>22 Q Yes.</p> <p>23 A Individual department people would be, the</p> <p>24 poultry specialist for the United States would be.</p> <p>25 But once you get into wheat farmers, wheat</p>

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<p>1 specialists, or departments of engineering, whatever</p> <p>2 it may be, at the USDA level there is no such thing,</p> <p>3 but other departments that have very little to do</p> <p>4 with chickens, they would not be exposed at all to</p> <p>5 this and they couldn't absorb it even if they were.</p> <p>6 Q Are there USDA departments that focus on</p> <p>7 chickens?</p> <p>8 A Absolutely, yes.</p> <p>9 Q Okay. So in those departments that focus</p> <p>10 on chickens, would those folks have been aware of</p> <p>11 these reports you're putting out?</p> <p>12 MR. OLSON: Objection to form.</p> <p>13 THE WITNESS: Some would. Some would.</p> <p>14 There's all kinds of interest in chickens.</p> <p>15 Like my cousins would say, you're a chicken</p> <p>16 inspector. No, I'm not a chicken inspector.</p> <p>17 So there's all different people who work</p> <p>18 with chickens. I'm talking about thousands at the</p> <p>19 federal level, institutional level, and so on.</p> <p>20 So people who are interested in egg laying</p> <p>21 chickens in California, we would have no problem</p> <p>22 with covering them, but --</p> <p>23 BY MR. TAKENOUCHI:</p> <p>24 Q So looking at some of the reports you've</p> <p>25 already talked about --</p>	<p>1 A It is the theme behind the whole</p> <p>2 newsletter.</p> <p>3 Q Okay. And so this theme about supply and</p> <p>4 price issues, is that what you're talking about?</p> <p>5 A Yes.</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 BY MR. TAKENOUCHI:</p> <p>8 Q This theme about supply and price issues,</p> <p>9 was that in just this report or did you have many</p> <p>10 reports over time that dealt with that issue?</p> <p>11 MR. OLSON: Objection; form.</p> <p>12 THE WITNESS: It's been discussed by me in</p> <p>13 multiple reports. I can't say many, but the concept</p> <p>14 here of a production versus the value of that</p> <p>15 production right here, that's what that is, has been</p> <p>16 the subject of several reports.</p> <p>17 BY MR. TAKENOUCHI:</p> <p>18 Q Do you know when you first started</p> <p>19 recommending to producers that they might want to</p> <p>20 look at their supply issues if they were concerned</p> <p>21 about being a viable business?</p> <p>22 A I didn't -- I haven't said this before, but</p> <p>23 it was inferred, that 40 percent of the time your</p> <p>24 clients are losing money. And that is a repeatable</p> <p>25 concept as far as I went back in my career. And I</p>
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<p>1 A Yes.</p> <p>2 Q -- and I think you've mentioned kind of</p> <p>3 your history of writing these kinds of analyses for</p> <p>4 a while --</p> <p>5 A Yes.</p> <p>6 Q -- this analysis here in Bell 4 talking</p> <p>7 about supply of eggs and possible price effects, is</p> <p>8 that something that you just discovered in 1994 or</p> <p>9 did you have some knowledge of that before 1994?</p> <p>10 MR. OLSON: Objection; form.</p> <p>11 THE WITNESS: We have been tracking this</p> <p>12 kind of information since I began in 1958.</p> <p>13 BY MR. TAKENOUCHI:</p> <p>14 Q Okay.</p> <p>15 A It starts with the original source. And</p> <p>16 the original source is the farmer.</p> <p>17 USDA would be a parallel source, but they</p> <p>18 go back to the farmer. The farmer is the one who</p> <p>19 has these kinds of numbers.</p> <p>20 Now, some of these numbers are constructed</p> <p>21 by me, taking what's reported, what you know from</p> <p>22 this source and this source and this source, and</p> <p>23 it's very difficult to find this last column, for</p> <p>24 example, on page 1.</p> <p>25 Q Okay.</p>	<p>1 started in 1957 with the year '57 analysis, and I</p> <p>2 started in January of '58.</p> <p>3 My experience was that that was frequent</p> <p>4 enough, either -- either one month after another,</p> <p>5 one year after another, or for that period that</p> <p>6 that's a serious problem.</p> <p>7 And when you relate it to the number of</p> <p>8 eggs that are produced and the size of the flock and</p> <p>9 all that, it's a very important relationship.</p> <p>10 So much of my program had to do with</p> <p>11 bringing that into line.</p> <p>12 Approximately in a five-year period -- I</p> <p>13 believe I testified to this yesterday, five or</p> <p>14 six-year period is a cycle.</p> <p>15 What I mean by a cycle, it means from good</p> <p>16 to poor to bad to poor back to good annually.</p> <p>17 And so I would say that there's two years</p> <p>18 of poor, two years of fair, one year of good in</p> <p>19 every cycle. That's an important concept that maybe</p> <p>20 outsiders don't realize, is that it's not a</p> <p>21 continuously good or bad industry. It's an</p> <p>22 up-and-down situation.</p> <p>23 One of the highest peaks of profitability</p> <p>24 we had was in the last four or five years, and it</p> <p>25 had to do with the high cost of corn and so on. But</p>

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<p>1 the up was in three months and the down was in three 2 months. 3 Q And just to take that issue for a second, 4 you said the high price of corn? 5 A Yes. 6 Q Don't farmers -- do farmers have to pay for 7 corn? I'm not sure how -- prices may have gone 8 high, but didn't costs go up as well? 9 MR. OLSON: Objection; form. 10 THE WITNESS: Well, corn is the cost. Corn 11 is 65 percent of your cost. 12 So the price of corn being sold overseas 13 went way up. It went up to 30, 35 percent of the 14 total. 15 The amount that went into ethanol 16 production for fuel, that takes off a portion of the 17 feed stuffs that the poultrymen are used to using 18 and elevates the price of the remainder. 19 And so those things happening, and some of 20 those were -- you could blame on the federal 21 government for policies on fuel and so on. But 22 there's only so many acres to grow corn. And so I 23 got -- I started thinking maybe we're going to have 24 to contract with the corn grower to supply me only 25 with my corn.</p>	<p>1 something about that issue. I can't tell you the 2 first letter I ever wrote about that, I can't tell 3 you. 4 Q Was this before this Bell number 4 in 1994? 5 A Probably. 6 Q Do you think it is fair to say that the 7 USDA was aware of the recommendations made for 8 dealing with supply and price during this period? 9 MR. OLSON: Objection; form. 10 THE WITNESS: The economists were in the 11 nation -- in the USDA, rather, there might have been 12 10 or 20 economists that were concerned about 13 poultry. 14 Today it's just two or three statisticians, 15 but not Ph.D. economists working in poultry. 16 BY MR. TAKENOUCHI: 17 Q Looking back at this period in the 1990s, 18 did you see it as part of your job at the 19 cooperative extension to give advice to farmers 20 about how to deal with supply and price issues? 21 A Yes, I felt that was part of my 22 responsibility, yes. 23 Q Did you feel it was part of your mission? 24 MR. OLSON: Objection to form. 25 THE WITNESS: Mission is a broader concept</p>
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<p>1 BY MR. TAKENOUCHI: 2 Q Okay. So going back to the reports you did 3 for the cooperative extension, I think I'd asked if 4 you remembered when you first started telling 5 individual farmers or writing in newsletters that 6 there is a relationship between the supply of eggs 7 and the price of eggs? 8 A Soon as I was convinced that this was an 9 ongoing problem. 10 Q And when was that? 11 A Well, I can't tell you. It would have been 12 post 1958, because I would have to experience these 13 records coming in from my cooperators that said that 14 this is happening so often that it's pushing people 15 out of business. 16 Q And I understand past 1958, but can you put 17 it roughly in time? Is it the '70s, the '60s, the 18 '80s? 19 A Now, remember I told you that the cycles 20 are five years, so -- and you have two bad years in 21 a row and here is five years later you have it 22 again. 23 I can't tell you which year at the 24 beginning that this whole thing started, but it was 25 there long enough, frequently enough to start to say</p>	<p>1 than procedures. I've felt -- I've always felt that 2 the -- that my mission is to work for a healthy 3 industry economically, and that's a moving target. 4 BY MR. TAKENOUCHI: 5 Q Do you think that the USDA was aware of the 6 recommendations you were making in the 1990s about 7 how to better match supply and, therefore, increase 8 price? 9 A The economists -- 10 MR. OLSON: Objection to form. 11 THE WITNESS: There are economists I've 12 worked with all my life would be, yes. 13 BY MR. TAKENOUCHI: 14 Q And why do you say that? 15 A Why do I say that? Because it's true. 16 Q Did you talk with anyone about that? 17 A Oh, yes. There are so few economists 18 involved -- remember, all my data comes from the 19 USDA -- not all of it, but some of the bare material 20 comes -- because they have a better collection 21 system. I can get on the phone and find out what 22 one person is doing, but they have a thorough 23 collection system. I don't always agree with it, 24 their sampling procedures and so on. 25 But if I don't agree with it, then I modify</p>

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<p>1 it. I modify it and I say this is my 2 interpretation. 3 Q But you talk with USDA economists about 4 your recommendation about how to better match supply 5 and demand and, therefore, affect prices? 6 A Yes. 7 MR. OLSON: Objection to form. 8 BY MR. TAKENOUCHI: 9 Q Did anyone at the USDA ever tell you that 10 you shouldn't be making these kind of 11 recommendations? 12 A No. 13 Q Did anyone at any other government entity 14 ever tell you you shouldn't be making those 15 recommendations? 16 A No. 17 Q Sir, I want to refer you to Bell 8. 18 A 8. 19 Q This is that August 2nd, 1999 United 20 Voices. 21 A Okay. Go ahead. 22 Q And I think what we were looking at in this 23 document was on page 3, and I believe there's four 24 numbers there -- 1, 2, 3, 4 -- those 25 recommendations. I don't know how to characterize</p>	<p>1 Q What is this? 2 A It's a newsletter. 3 Q Okay. 4 A Number 217 in a series. 5 Q Okay. 6 MR. OLSON: Does this document have a Bates 7 number? 8 MR. TAKENOUCHI: It does not have a Bates 9 number. 10 MR. OLSON: It hasn't been produced? 11 MR. TAKENOUCHI: It was on the public 12 website for the cooperative extension. 13 MR. OLSON: But it hasn't been produced? 14 MR. TAKENOUCHI: No. 15 Q So drawing your attention here to this 16 document -- 17 MR. OLSON: All right. We'll just have a 18 standing objection to the questions about the 19 document that apparently hasn't been produced. 20 MR. TAKENOUCHI: Okay. 21 Q So looking at this document, on the first 22 page there, Mr. Bell, do you see that headline 23 there? 24 A Yes. 25 Q It says, "California's Egg Industry Record</p>
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<p>1 those. 2 Can I have this marked next in order, 3 please. 4 (Deposition Exhibit 29 was marked for 5 identification by the court reporter 6 and is attached hereto.) 7 BY MR. TAKENOUCHI: 8 Q Sir, you've been handed what has been 9 marked as Bell 29. 10 A Are we looking at 3 or 29? 11 Q Let's look at 29, but leave 3 on the table. 12 A Leave that for later? 13 Q Yes. 14 MR. OLSON: We're looking at 8? 15 THE WITNESS: 29. 16 BY MR. TAKENOUCHI: 17 Q Yes, 8. Leave 8 on the table, but we're 18 looking at 29. 19 A Okay. 20 Q Do you recognize this document? 21 A Yes. 22 MR. TAKENOUCHI: For the record, this is 23 Egg Economics Update dated July 12, 1999. 24 Q What is this document? 25 A Yes -- pardon me.</p>	<p>1 One Week Loss - \$2 million"? 2 A Yes, I see that. 3 Q What does that mean? 4 A That means that the eggs were being sold at 5 a price \$2 million less than it cost them to produce 6 them. 7 Q And was that a problem? 8 A Was that a problem? What do you think? 9 Excuse me, I'm not supposed to ask that. 10 It's a problem if you lose money, yes, in 11 anything. 12 Q Was it a particular problem for the egg 13 industry? People lose money all the time, right? 14 MR. OLSON: Objection to form. 15 THE WITNESS: At those levels, I think you 16 see as much as a 22-cent loss per dozen. Every 17 dozen eggs you produce, you lose 22 cents a dozen. 18 It doesn't take too long before you can't pay your 19 feed bill or any of the other costs, and it's part 20 of being pushed out of business. 21 BY MR. TAKENOUCHI: 22 Q I want to draw your attention to the second 23 page. 24 A Go ahead. The second page. 25 Q The title here is, "Removing Flocks Early</p>

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<p>1 That Fail to Cover Variable Costs of Production."</p> <p>2 A Uh-huh.</p> <p>3 Q Do you remember making this recommendation?</p> <p>4 A Yes.</p> <p>5 Q And what is the recommendation?</p> <p>6 A That if you're not covering your costs and</p> <p>7 you don't have any foreseeable future that you will,</p> <p>8 you'd better get rid of them.</p> <p>9 Q Now, why would you have to recommend this?</p> <p>10 Isn't that basic economics or basic business sense?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: Well, thank you.</p> <p>13 BY MR. TAKENOUCHI:</p> <p>14 Q Why do you have to recommend this?</p> <p>15 Shouldn't people know that anyway?</p> <p>16 A Why do you have to refresh people on the</p> <p>17 facts of life? That's what this is. This is a</p> <p>18 demonstration of these relationships. And you are</p> <p>19 trying to give an example, and what you're really</p> <p>20 trying to do is encourage them to run the analysis</p> <p>21 themselves.</p> <p>22 And the way you run the analysis yourself</p> <p>23 is you take one flock at a time, not the entire</p> <p>24 company, one flock at a time, and determine what its</p> <p>25 costs are and what its income is.</p>	<p>1 out, I guess.</p> <p>2 BY MR. TAKENOUCHI:</p> <p>3 Q I think it is right there in front of you.</p> <p>4 A This one? Yes, here is number 8. Go</p> <p>5 ahead.</p> <p>6 Q If you can compare what you have in the</p> <p>7 document in front of you, Bell 29, with that page in</p> <p>8 Bell 8, do those look like the same recommendations?</p> <p>9 MR. OLSON: Objection; form.</p> <p>10 THE WITNESS: I'm sure the general tone is</p> <p>11 the same. The numbers are monthly versus annually.</p> <p>12 It would take a while to -- what's the dates on</p> <p>13 these two reports? '99 and -- '99 -- they are</p> <p>14 almost exactly the same date. This one -- is this</p> <p>15 one from this one? This date here is August '99.</p> <p>16 This date is July '99. So this one preempts this</p> <p>17 one. And I can't imagine that my thinking process</p> <p>18 has changed.</p> <p>19 BY MR. TAKENOUCHI:</p> <p>20 Q So referring to Bell Number 29 with the</p> <p>21 date of July 12th, 1999 --</p> <p>22 A Okay. Go ahead.</p> <p>23 Q -- you'll notice that this one has that</p> <p>24 University of California disclaimer on the bottom</p> <p>25 there?</p>
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<p>1 Now, its income is going to be varied -- we</p> <p>2 talked about this yesterday -- egg quality goes</p> <p>3 down, egg production goes down so every flock is</p> <p>4 unique.</p> <p>5 So you then have to step forward and say</p> <p>6 what's it going to be next week and the month after</p> <p>7 and the month after.</p> <p>8 And if they don't match, then you should</p> <p>9 get rid of them now before they've accumulated</p> <p>10 losses.</p> <p>11 Q So drawing your attention to the third page</p> <p>12 of this document --</p> <p>13 A Third page. Okay. Is there a third page?</p> <p>14 Q Yes.</p> <p>15 A There it is. Go ahead.</p> <p>16 Q There you are.</p> <p>17 So if you look at that, do you see those</p> <p>18 four bullet points there?</p> <p>19 A Yes.</p> <p>20 Q Do you recognize this?</p> <p>21 A I did this report, yes.</p> <p>22 Q Okay. Are these the same bullet points</p> <p>23 that are in Bell Number 8?</p> <p>24 MR. OLSON: Objection; form.</p> <p>25 THE WITNESS: We have to get Bell Number 8</p>	<p>1 A On the letter itself.</p> <p>2 Q Would this document have been publically</p> <p>3 available back in 1999?</p> <p>4 MR. OLSON: Objection to form.</p> <p>5 THE WITNESS: Oh, yeah. This is page 4 --</p> <p>6 page 3 of a single cover sheet, so this entire --</p> <p>7 this document down at the bottom is one sheet, but</p> <p>8 it is in two or three articles, two or three</p> <p>9 comments.</p> <p>10 BY MR. TAKENOUCHI:</p> <p>11 Q And these are the kinds of articles and</p> <p>12 reports that you would make publically available?</p> <p>13 A Sure, I would prefer to do one subject at a</p> <p>14 time, but what we're talking about, losses and where</p> <p>15 we are headed as a result and removing flocks early</p> <p>16 as an alternative or possibility. So it's just a</p> <p>17 series of thoughts leading to solution of the first</p> <p>18 thought.</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 BY MR. TAKENOUCHI:</p> <p>21 Q So referring to -- so with reference to</p> <p>22 Bell Number 29 here, this July 12th, 1999 --</p> <p>23 A That's what I'm looking at.</p> <p>24 Q Okay. At that point when you wrote this</p> <p>25 document, were you a contractor for UEP?</p>

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<p>1 A No. I don't think I became a contractor</p> <p>2 with UEP until 2001, did I? Isn't that right?</p> <p>3 Q Yes, it is.</p> <p>4 A Nobody is listening.</p> <p>5 Q We're listening.</p> <p>6 A There is a document here that says when I</p> <p>7 did become. I think it was 2001. That's when I</p> <p>8 retired, so it makes sense.</p> <p>9 Q Okay. So I just have one more line of</p> <p>10 questions here.</p> <p>11 MR. GODLSTEIN: Before you start, at some</p> <p>12 point I'm going to ask you for a time of testimony</p> <p>13 because I feel like we're starting to get close to</p> <p>14 our seven-hour mark, and at that point I want to be</p> <p>15 able to put an objection on the record.</p> <p>16 MR. TAKENOUCHI: Do a break and we'll get a</p> <p>17 count.</p> <p>18 MR. OLSON: Do we really need a break? Why</p> <p>19 don't we put the objection on now and he can finish.</p> <p>20 MR. TAKENOUCHI: We're just burning up</p> <p>21 time. Let's take a two-minute break.</p> <p>22 Let's go off record.</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 approximately 3:42 p.m. We're going off the record.</p> <p>25 (Recess.)</p>	<p>1 Q What would have happened if there hadn't</p> <p>2 been this phasing-in period for these cage space</p> <p>3 guidelines?</p> <p>4 MR. OLSON: Objection; form.</p> <p>5 THE WITNESS: Well, an example is you might</p> <p>6 get all the attorneys in the United States getting</p> <p>7 after the regulators and saying that you're going to</p> <p>8 put the whole business -- whole business out of</p> <p>9 business.</p> <p>10 There's an example of that when the United</p> <p>11 States Department of Agriculture came into</p> <p>12 de-populate chickens that had a disease. The</p> <p>13 Californians said wait a minute, you can't do that</p> <p>14 overnight and went to court and it stopped it. The</p> <p>15 USDA was stopped.</p> <p>16 And so then they said, well, we have to</p> <p>17 have more time to make these decisions and develop</p> <p>18 policy. That's what's going on here. You just</p> <p>19 don't make changes overnight with six-month-old</p> <p>20 bunch of birds, you don't kill six-month-old birds.</p> <p>21 So just from logistic standpoint, the</p> <p>22 transition period is very critical.</p> <p>23 BY MR. TAKENOUCHI:</p> <p>24 Q If there hadn't been that transition period</p> <p>25 for the cage space portion of the guidelines, what</p>
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<p>1 THE VIDEOGRAPHER: The time is</p> <p>2 approximately 3:44 p.m., and we're back on the</p> <p>3 record.</p> <p>4 BY MR. TAKENOUCHI:</p> <p>5 Q Mr. Bell, directing your attention to Bell</p> <p>6 Number 14, Bates number BELL-D-28020, if you look on</p> <p>7 the eighth page of this document, do you see at the</p> <p>8 bottom there it says, "The Europeans have" --</p> <p>9 A I'm trying to find the Number 8.</p> <p>10 Q The Bates numbers.</p> <p>11 A My page number, not yours. I got it.</p> <p>12 Go ahead.</p> <p>13 Q Do you see that bottom paragraph saying,</p> <p>14 "The Europeans have recognized"?</p> <p>15 A Yes.</p> <p>16 Q Okay. What were you saying in this</p> <p>17 paragraph?</p> <p>18 A Basically how long to implement the</p> <p>19 recommendations or requirements of the plan, the</p> <p>20 animal welfare plan.</p> <p>21 The Europeans recognized the need that you</p> <p>22 couldn't do it overnight, that it would take some</p> <p>23 time, and this is the application of that same</p> <p>24 principle to enacting these rules in the United</p> <p>25 States.</p>	<p>1 would the effect have been on egg prices?</p> <p>2 MR. OLSON: Object to form.</p> <p>3 THE WITNESS: Well, I don't think it would</p> <p>4 be enforceable to think that anybody could do it</p> <p>5 overnight. Transition can be as much as one day,</p> <p>6 one year, ten years, whatever.</p> <p>7 We know what this was requested here as far</p> <p>8 as transition period, but if it was a transition</p> <p>9 period of one year, it would have been a</p> <p>10 catastrophe.</p> <p>11 BY MR. TAKENOUCHI:</p> <p>12 Q And what would be the price effects of that</p> <p>13 catastrophe?</p> <p>14 A Probably you couldn't pay for the eggs, and</p> <p>15 then the market would be disrupted, eggs would not</p> <p>16 travel across the country.</p> <p>17 Price would escalate, the consumer would</p> <p>18 have to foot the bill, and then you might even have</p> <p>19 a shortage.</p> <p>20 You might have a shortage to the point that</p> <p>21 a supermarket chain might just run out of eggs,</p> <p>22 period, for a day or two, if there was no orderly</p> <p>23 transition.</p> <p>24 Q You can put that aside. I just have a</p> <p>25 couple final questions here.</p>

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<p>1 Mr. Bell, do you think the Scientific</p> <p>2 Advisory Committee was a sham designed to just</p> <p>3 rubber-stamp an effort by egg producers to inflate</p> <p>4 prices?</p> <p>5 A Absolutely not.</p> <p>6 MR. OLSON: Object to form.</p> <p>7 BY MR. TAKENOUCHI:</p> <p>8 Q Let me ask it again. Give him a second to</p> <p>9 object and you can answer.</p> <p>10 A Go ahead.</p> <p>11 Q Mr. Bell, do you think the Scientific</p> <p>12 Advisory Committee was just a sham to rubber-stamp</p> <p>13 an effort by egg producers to inflate prices?</p> <p>14 MR. OLSON: Objection to form.</p> <p>15 THE WITNESS: Now am I supposed to answer?</p> <p>16 I said "Absolutely not."</p> <p>17 BY MR. TAKENOUCHI:</p> <p>18 Q At any time while the committee was doing</p> <p>19 its work, did anyone ever tell you that the</p> <p>20 Scientific Advisory Committee was a sham designed to</p> <p>21 rubber-stamp a conspiracy to inflate egg prices?</p> <p>22 MR. OLSON: Objection to form.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MR. TAKENOUCHI:</p> <p>25 Q Did any members of the Scientific Advisory</p>	<p>1 MR. GODLSTEIN: Don't just jump over Jason</p> <p>2 and answer. So pause before you answer.</p> <p>3 THE WITNESS: Well, I thought we were</p> <p>4 limited on time here.</p> <p>5 MR. GODLSTEIN: We're not limited on time,</p> <p>6 but everybody has to say something.</p> <p>7 THE WITNESS: That's fine, and I'll stay as</p> <p>8 long as I can. I thought people can't say what</p> <p>9 they're objecting to.</p> <p>10 MR. OLSON: He's asking you to take a brief</p> <p>11 pause after the question.</p> <p>12 BY MR. TAKENOUCHI:</p> <p>13 Q Mr. Bell, did you initiate any discussions</p> <p>14 during your service on the Scientific Advisory</p> <p>15 Committee where you had the goal of increasing egg</p> <p>16 prices?</p> <p>17 A I didn't have the role of increasing egg</p> <p>18 prices as a member of the committee.</p> <p>19 I'm able to separate -- I'm able to</p> <p>20 separate topics, and today we're going to talk about</p> <p>21 animal welfare and tomorrow I'm going to still be</p> <p>22 concerned about egg prices.</p> <p>23 Q That's all. I think there might be some on</p> <p>24 the phone who might have questions. Thank you.</p> <p>25 MR. MONICA: This is John Monica. We're</p>
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<p>1 Committee ever say that they felt their role was to</p> <p>2 help the industry suppress the supply of eggs and,</p> <p>3 thereby, increase egg prices?</p> <p>4 A No.</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 BY MR. TAKENOUCHI:</p> <p>7 Q If the goal of the Scientific Advisory</p> <p>8 Committee had been to inflate egg prices, do you</p> <p>9 think the members of the Scientific Advisory</p> <p>10 Committee would have participated in the committee?</p> <p>11 A Not the specific members --</p> <p>12 MR. OLSON: Objection to form.</p> <p>13 THE WITNESS: The composition of the</p> <p>14 committee would be totally different. If the issue</p> <p>15 was health of the industry or economic health or</p> <p>16 what have you, this committee had its expertise in</p> <p>17 animal welfare, period.</p> <p>18 I was the only one that ever was concerned</p> <p>19 about the economics of what was going on or being</p> <p>20 recommended, but animal welfare was the driver in</p> <p>21 this committee.</p> <p>22 MR. GODLSTEIN: It is getting late in the</p> <p>23 day. Just try to remember Steig. Give him a minute</p> <p>24 after his question.</p> <p>25 THE WITNESS: How much longer?</p>	<p>1 not going to be asking questions. We've got an</p> <p>2 annoying fire alarm, so we're waiving it.</p> <p>3 THE WITNESS: I didn't think the topic was</p> <p>4 that hot.</p> <p>5 MR. TAKENOUCHI: Is there anyone else on</p> <p>6 the phone?</p> <p>7 Okay. I don't hear anything.</p> <p>8 THE WITNESS: Are they all together in one</p> <p>9 place?</p> <p>10 MR. OLSON: So for the sake of everyone,</p> <p>11 Mr. Bell, we don't have any pressing need for</p> <p>12 additional questions at this time.</p> <p>13 As we've discussed with Mr. Bell's counsel,</p> <p>14 documents are still being produced that we're going</p> <p>15 to review. We understand that we're going to be</p> <p>16 given the opportunity to come back for some</p> <p>17 additional time that we'll discuss with Mr. Bell's</p> <p>18 counsel.</p> <p>19 MR. GODLSTEIN: Correct.</p> <p>20 MR. OLSON: Thank you.</p> <p>21 THE VIDEOGRAPHER: This concludes today's</p> <p>22 video deposition of Don Bell, Volume II. The total</p> <p>23 number of media used was 3. The time is</p> <p>24 approximately 3:53 p.m., and we're off the record.</p> <p>25 (TIME NOTED: 3:53 p.m.)</p>

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